

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	<b>Docket#</b>	
CARL GOODLOE,	:	12-cv-03018-KAM-VMS
Plaintiff,	:	
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
	:	
CITY OF NEW YORK, et al.,	:	December 16, 2014
Defendants.	:	
-----X		

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE VERA M. SCANLON  
UNITED STATES MAGISTRATE JUDGE

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1 THE COURT: All right. So this is Goodloe v.  
2 NYC, 12-cv-3018 and I know you well, but let's just put  
3 your appearances on the record.

4 For the plaintiff?

5 MR. BAKER: Good morning, your Honor. For the  
6 plaintiff, Carl Goodloe, Harold Baker, 32 Court Street,  
7 Brooklyn, New York.

8 THE COURT: Good morning or good afternoon, I  
9 guess.

10 And for the City defendants?

11 MS. HABER: Good afternoon, your Honor. Erica  
12 Haber for the defendants.

13 THE COURT: Okay. So I have -- I think the  
14 copies I have are from the courtesy copies but some of  
15 the docket numbers -- but we have plaintiff's memo,  
16 defendants' memo, Ms. Haber's declaration, Mr. Baker, the  
17 notice of motion with all of the attachments and then  
18 your cover letter of November 13th from Mr. Baker and  
19 then the November 10th letter from the City and also, I  
20 have the September 5th ex parte letter. Okay.

21 So I have a couple of questions but let's start  
22 with the very big picture which is one, I think, of the  
23 City's objections which is relevance. Why do you need  
24 this, which is obviously going to tie right into the  
25 question about what's the compelling need that you have

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1 which would be if you go beyond relevance, then why do  
2 you really need this? Can you jump right in?

3 MR. BAKER: Thank you, your Honor. The  
4 material that plaintiff sees is relevant to his claim for  
5 malicious prosecution regarding the conspiracy charge.

6 THE COURT: Right.

7 MR. BAKER: And the way it's relevant, Judge,  
8 is that in order to prove malicious prosecution,  
9 plaintiff has to show that there was fraud or deceit or  
10 perjury at the grand jury and that the police acting with  
11 the confidential informant caused false or fraudulent  
12 testimony to occur.

13 It's plaintiff's position that the only way  
14 that we can prove that is to discover exactly what it was  
15 the confidential informant told the police and told the  
16 DA and also the circumstances under which that  
17 information was relayed.

18 THE COURT: Uh-hum.

19 MR. BAKER: A lot of it has to do with whether  
20 or not the confidential informant was under pressure, was  
21 coerced, was promised leniency. None of that information  
22 has been disclosed. It's been -- a little bit of  
23 information has been disclosed that he did -- that the  
24 confidential informant receive monetary compensation and  
25 also consideration in a criminal matter.

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1           My client denies any involvement in the  
2 conspiracy whatsoever. He declares his innocence. In a  
3 nutshell, our position is you can't have your cake and  
4 eat it too. In other words, the defendants claim that  
5 there probable cause through the testimony of the  
6 confidential informant. Yet we don't want to disclose  
7 the information around that probable cause based on the  
8 law enforcement privilege. So the plaintiff is basically  
9 hamstrung in their efforts to prove fraud, deceit,  
10 perjury, et cetera, to establish the malicious  
11 prosecution claim. There really is no other information  
12 that will suffice or no other discoverable material which  
13 will answer these questions and that's the basis of our  
14 claim.

15           THE COURT: Where did the fraud happen in your  
16 view? I mean what happened?

17           MR. BAKER: All right. Well, in context with  
18 all the other information in the case and that --

19           THE COURT: Right.

20           MR. BAKER: -- and what I mean is if you look  
21 at the way the other part of the investigation unfolded  
22 with respect to the allegations that he sold drugs on a  
23 particular date --

24           THE COURT: Right.

25           MR. BAKER: -- these identification procedures,

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1 the testimony about confirmatory I.D.s, all I would  
2 suggest to the Court is -- sounds and is incredible.  
3 Because of that, they -- our theory is that they needed  
4 something else to boost up their case to support the  
5 allegations against Mr. Goodloe and they came up with  
6 this confidential informant. I don't know what the  
7 confidential informant said to the grand jury but the  
8 judge who reviewed the grand jury minutes had his own  
9 doubts about the D.A.'s case against Mr. Goodloe and  
10 reduced the bail and released him from jail at that time.  
11 So there is something there and we just don't know what  
12 it is.

13 And I would suggest to the Court that I believe  
14 that through discovery and through discovering what the  
15 confidential informant said and the circumstances under  
16 which it was said, we will be able to establish that  
17 there was some fraud, perjury, deceit, with respect to  
18 bringing this allegation of conspiracy against Mr.  
19 Goodloe.

20 THE COURT: And you don't have the grand jury  
21 minutes yet?

22 MR. BAKER: I don't have the grand jury minutes  
23 of the confidential informant, no.

24 THE COURT: All right. But you have the  
25 others?

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1 MR. BAKER: I have --

2 THE COURT: All of the others?

3 MR. BAKER: -- grand jury minutes of the  
4 testimony of the arresting officer and the undercover  
5 were provided to Mr. Goodloe during the course of the  
6 prosecution --

7 THE COURT: Discovery, right.

8 MR. BAKER: -- of the indictment.

9 THE COURT: Is that everybody or do you know if  
10 it's everyone who testified besides the CI?

11 MR. BAKER: I don't know if that was everybody  
12 who testified. I only have what they gave me.

13 THE COURT: All right. And why wasn't the CI  
14 testimony given over then, for the same reasons?

15 MR. BAKER: The CI -- yeah, the CI testimony  
16 was withheld, I guess --

17 THE COURT: Okay.

18 MR. BAKER: -- just prior to trial but that  
19 never happened because they dismissed the case.

20 THE COURT: Right.

21 MR. BAKER: So he never got that and I've  
22 requested that and requested all the other information  
23 with respect to the CI.

24 THE COURT: Right, I saw that. Where is the  
25 fraud itself though? You're saying like the wrong that

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1 was done to your client was just in testifying at the  
2 grand jury falsely, so that there was an indictment or  
3 there was some other like -- whatever.

4 MR. BAKER: The --

5 THE COURT: Was there other activity around  
6 that you think to help the case --

7 MR. BAKER: As to the --

8 THE COURT: -- continue so that --

9 MR. BAKER: Yes.

10 THE COURT: -- you know, your client --

11 MR. BAKER: Yes, because --

12 THE COURT: Okay.

13 MR. BAKER: Thank you, your Honor. You're  
14 correct in observing that because actually there was  
15 information contained in the criminal court complaint  
16 that was attested to by the arresting officer that he  
17 received information from the CI about Carl Goodloe, and  
18 that was in the criminal court complaint which he caused  
19 to be initiated against my client.

20 There were also, I believe, based on  
21 information and belief, that there were also meetings  
22 between the CI and the police, perhaps meetings between  
23 the CI and the DA where this information was relayed, the  
24 false information was relayed to the police either with  
25 the knowledge of the police or with -- let me restate

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1 that.

2 It is my belief, it is plaintiff's position  
3 that the information was provided -- that the police  
4 either came up with the information with the CI or the CI  
5 falsely implicated my client based on pressure that was  
6 put on him or promised or made to him by the police to  
7 implicate Mr. Goodloe.

8 So that's where the fraud and the deceit and  
9 the perjury come in because the police colluded with the  
10 CI, either they forced him to or they basically bribed  
11 him to implicate Mr. Goodloe when, in fact, Mr. Goodloe  
12 was innocent of any such crime.

13 The CI is the sole source of information that  
14 Goodloe participated in the conspiracy. There is no  
15 other evidence at all. The only evidence comes from that  
16 CI and from the police and from the --

17 THE COURT: Oh, but isn't that the -- I mean,  
18 that's sort of the key part of the defendants' argument,  
19 right? It's not solely the CI. We have the police  
20 officers, right? Because you had -- there's the  
21 undercover, right?

22 MR. BAKER: Right, but they're the very people  
23 that I am claiming have presented false evidence. So I  
24 just don't want to take their word for it, your Honor,  
25 and the Court should not take their word for it and I



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1 think if you look at the testimony that was provided by  
2 the undercover and the arresting officer at the  
3 depositions, it's clear that they weren't truthful. It's  
4 clear that they're embellishing. It's clear that there  
5 testimony is not credible with respect to the buy, the  
6 I.D., the confirmatory information, the confirmatory  
7 I.D. --

8 THE COURT: Right.

9 MR. BAKER: -- of my client. And this was a  
10 set up. And long before we even knew the identity of the  
11 police officers from the September '05 arrest --

12 THE COURT: Right.

13 MR. BAKER: -- my client was telling me, I  
14 think it was the same cops who arrested me in  
15 September --

16 THE COURT: Uh-hum.

17 MR. BAKER: -- who were doing this to me. So  
18 lo and behold, we find out through discovery that, in  
19 fact, some of the same officers that are involved in the  
20 conspiracy case were the exact same officers that  
21 arrested my client for the September incident that  
22 resulted in a dismissal. He brought a lawsuit and  
23 received a money judgment.

24 THE COURT: But --

25 MS. HABER: That's not exactly accurate.

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1 THE COURT: Hang on. Hang on.

2 MS. HABER: Okay.

3 THE COURT: Isn't the January '06 or there's --  
4 this isn't the quicker version of it but isn't the  
5 undercover was involved with Bozman (ph.), right?  
6 There's buying drugs. It's plaintiff's apartment.  
7 There's a drug buy but no arrest and the defendants'  
8 position is because it was this investigation that was  
9 going to lead to this thirty-seven person indictment,  
10 right?

11 MR. BAKER: Well, it wasn't the plaintiff's  
12 apartment, your Honor.

13 THE COURT: And then --

14 MR. BAKER: It was Bozman's apartment.

15 THE COURT: Was the plaintiff there --  
16 allegedly there?

17 MR. BAKER: According to the --

18 THE COURT: Right.

19 MR. BAKER: Yes.

20 THE COURT: And then later on -- and there's --  
21 he's using a different name? I mean this is the --

22 MR. BAKER: No, what happened was --

23 THE COURT: -- version of events?

24 MR. BAKER: There was no name. The -- well,  
25 according to the undercover on the January 25th

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1 incident --

2 THE COURT: Uh-hum.

3 MR. BAKER: -- Bozman allegedly introduced the  
4 person in the apartment as "Hood."

5 THE COURT: What does that mean actually? It's  
6 J.D. Hood or something?

7 MR. BAKER: Well --

8 THE COURT: What is that?

9 MR. BAKER: -- I was confused by that  
10 because --

11 THE COURT: I don't under --

12 MR. BAKER: -- it --

13 THE COURT: Yeah.

14 MS. HABER: Your --

15 THE COURT: Because later on there's this issue  
16 about Goodloe being identified as being Goodloe, so what  
17 is that? What's the Hood thing?

18 MR. BAKER: Well, I think -- what I originally  
19 -- when I read the paperwork, I assumed that J.D. Hood  
20 was a name that was given to that subject by the  
21 undercover, which is normally what happens. That's how  
22 they get the J.D. name. The undercover designates a  
23 person --

24 THE COURT: So that's just John Doe?

25 MR. BAKER: John Doe, exactly.

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1 THE COURT: Okay.

2 MR. BAKER: And John Doe Red Shirt, John Doe  
3 Braids, John Doe Hood. However, at the deposition -- and  
4 this is the first time -- I mean I have questioned  
5 undercovers hundreds of time with respect to how they  
6 designate names but it's always the same thing, well he  
7 had a red shirt, so I called him J.D. Shirt --

8 THE COURT: Right.

9 MR. BAKER: -- or he had a hood on, so I called  
10 him J.D. Hood.

11 THE COURT: Uh-hum.

12 MR. BAKER: In this particular instance, the  
13 undercover claimed that he was introduced by Bozman to  
14 this person as "Hood."

15 THE COURT: That's the guy's name?

16 MR. BAKER: Right. Although there was no  
17 reference to that made in any of the paperwork by the  
18 undercover.

19 THE COURT: Okay.

20 MR. BAKER: In other words, there was no  
21 reference that until the deposition, I believe, there was  
22 no claim by the undercover that Bozman introduced the  
23 person as Hood, just that the guy's name was Hood.

24 THE COURT: And then there's an interaction  
25 much later in the year, is that right?

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1 MR. BAKER: Yes.

2 THE COURT: About drugs. And it's in that  
3 inter -- wait a minute, hang on. There's another  
4 purchase of drugs in November.

5 MR. BAKER: November 30th of '06, there was an  
6 attempt to purchase drugs by the undercover with --  
7 Bozman was walking with the undercover through the  
8 courtyard and supposedly Goodloe happened to walk by.  
9 The person they claim is Goodloe. J.D. Hood happened to  
10 walk by.

11 THE COURT: Right.

12 MR. BAKER: They had a very brief interaction.

13 THE COURT: What does that mean? This is the  
14 time -- this is thing about weight?

15 MR. BAKER: Yes.

16 THE COURT: And what does that -- what does  
17 weight mean?

18 MR. BAKER: I guess weight means more than just  
19 dimes, more like larger amounts of drugs.

20 THE COURT: Oh, okay.

21 MR. BAKER: Anyway, there's this very brief  
22 encounter and this is very interesting because the  
23 undercover describes that transaction as occurring in the  
24 courtyard between the buildings.

25 MR. BAKER: The arresting officer Cook,

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1 contradicts the undercover and says, "Well, I saw the  
2 whole thing. I was parked a block away and I saw in the  
3 middle of the afternoon, a block away Goodloe meeting  
4 with the undercover.

5 That testimony is incredible. One of them is  
6 lying because it didn't happen. It can't happen both  
7 ways. It can't be in the courtyard and also in the  
8 corner of Blake and Logan Avenue as the arresting officer  
9 said.

10 So this is why I put all those facts into the  
11 affirmation because I wanted your Honor to see my  
12 arguments in context because their case against Goodloe  
13 is so extremely weak that they needed something else to  
14 bring him into the case. They needed something else to  
15 push it over the line and so they come up with the CI.  
16 We don't even -- I don't even know if the CI even  
17 testified, to be honest with you, Judge. I don't know  
18 because I don't have all the grand jury minutes. But  
19 it's very suspicious to me that later on the CI comes --  
20 the CI supposedly comes forward, much later on, to get  
21 this information. That's why the timing is important.  
22 When did the CI come up with this information? When did  
23 he come forward with this information? Was it before or  
24 after the I.D.? It must have been after the I.D. that  
25 occurred, the photographic I.D.

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1 THE COURT: That's April of the next year?

2 MR. BAKER: The photograph I.D. was in December  
3 of '06. So you have the sale in January. Then you have  
4 the encounter in November, November 30th. Then you have  
5 a photo array in, I think, December 15th -- December 5th.

6  
7 THE COURT: All right. I'm sorry. I have the  
8 dates wrong. Okay. When is it, December '06?

9 MR. BAKER: December 5th, '06 you have the  
10 photo array and --

11 THE COURT: Okay. So just so I have the date,  
12 when's the thing with Cook and Goodloe in the car?

13 MR. BAKER: The thing with the observation of  
14 -- that happens on November 30th where undercover  
15 allegedly encounters --

16 THE COURT: This is where Cook -- isn't there  
17 an interaction where Cook realizes that Goodloe --

18 MR. BAKER: Yes, that's --

19 THE COURT: -- is Goodloe?

20 MR. BAKER: That's what I am talking about.  
21 That's where he --

22 THE COURT: All right. I'm sorry, the date --  
23 what's the date for that?

24 MR. BAKER: November 30th of 2006.

25 THE COURT: Excuse me.

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1 (Pause)

2 THE COURT: Okay. I'm sorry. Just so I --  
3 isn't there -- I'm just looking at my notes. Is there a  
4 later photo array --

5 MR. BAKER: There's --

6 THE COURT: -- where he realizes who Hood or  
7 whatever name Goodloe is using is actually Goodloe?

8 MR. BAKER: Yes, there's another encounter. I  
9 believe your Honor is referring to the encounter in  
10 April --

11 THE COURT: Okay, that's April. All right. So  
12 it's -- okay. So what happens in December '06 then?

13 MR. BAKER: Okay. So in December 5th of '06, a  
14 photo array is presented to the undercover and he picks  
15 out Mr. Goodloe and says, "That guy is J.D. Hood."

16 THE COURT: Right. Okay. I have the dates  
17 wrong.

18 MR. BAKER: One thing I just wanted to mention  
19 to your Honor also which is relevant is that the  
20 photograph that was used in the photo array, we believe  
21 -- and I haven't confirm this because I still haven't  
22 received information about the date that photograph was  
23 taken, I believe that was the photograph that was taken  
24 of Mr. Goodloe following the September '05 arrest that  
25 was eventually voided. That photograph pursuant to CPLR



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1 160.50 should have been destroyed.

2 THE COURT: Right.

3 MR. BAKER: Yet it was used in a photo array  
4 put together by Cook.

5 THE COURT: Okay. So just so I understand the  
6 big picture. Why are you saying that -- isn't the  
7 undercover a key to all of this? I mean, the undercover  
8 is there in January. The undercover is there in  
9 November. The undercover is the one making the I.D. in  
10 December, right?

11 MR. BAKER: The undercover --

12 THE COURT: And the Cook is tied to the  
13 undercover, right?

14 MR. BAKER: Correct.

15 THE COURT: And so --

16 MR. BAKER: Those --

17 THE COURT: And is it just that you think  
18 there's a problem and if we get this third-party --  
19 literally, the third-party, you might be able to shed  
20 down on this whole thing?

21 MR. BAKER: Yes, Judge, but let me focus a  
22 little bit more.

23 THE COURT: Uh-hum.

24 MR. BAKER: The testimony of the undercover and  
25 the AO are relevant to the charge of criminal sale of a

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1 controlled substance in the third degree. So just to  
2 remind, your Honor, our part of the claim is that he was  
3 falsely and wrongly accused of all the crimes that he was  
4 charged with in the indictment. The criminal sale  
5 charge, the CI is not -- has nothing to do with --

6 THE COURT: Uh-hum.

7 MR. BAKER: -- because he didn't observe any of  
8 that -- well, not that I know of. I mean --

9 THE COURT: We don't know.

10 MR. BAKER: -- he may have said that, yeah, I  
11 was there --

12 THE COURT: Right.

13 MR. BAKER: -- that day and did those -- I  
14 don't know. But based on what I know now, the AO and the  
15 UC and those other police officers who involved in both  
16 of those sales --

17 THE COURT: Uh-hum.

18 MR. BAKER: -- are the key to the charge of  
19 criminal sale of a controlled substances in the third  
20 degree. The conspiracy charge is the AO, the CI, and the  
21 D.A. because I don't think the undercover has anything  
22 to --

23 THE COURT: Okay. And just to go back, you  
24 were starting to say it earlier and I cut you off, what  
25 is it the criminal complaint says, the CI said to the AO?

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1 MR. BAKER: Right, in the criminal court  
2 complaint, the arresting officer swears that he received  
3 information from a CI.

4 THE COURT: Uh-hum.

5 MR. BAKER: That Mr. Goodloe participated in  
6 this conspiracy or engaged in activity which made out the  
7 crime of conspiracy in the first degree. It's very  
8 generic language. There's not a lot there.

9 THE COURT: But --

10 MR. BAKER: But it clearly says it.

11 THE COURT: -- isn't there no --

12 MS. HABER: Does he say -- I'm sorry, I don't  
13 know if he says, "Informed by a confidential informant or  
14 a person known to this apartment." That could have been  
15 the undercover officer. As far as I know, there's --  
16 I'm not sure that's what the criminal court complaint  
17 states.

18 MR. BAKER: I think we --

19 MS. HABER: There was (indiscernible) --

20 MR. BAKER: -- I have to find that.

21 MS. HABER: -- to that. Because, your Honor,  
22 it's my understanding that it was, you know -- the  
23 conspiracy charge was determined by the Office of the  
24 District Attorney. They're the ones that determined the  
25 charges.

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1 MR. BAKER: No, but the --

2 THE COURT: Yeah, but there was the evidence  
3 coming from the --

4 MR. BAKER: -- the AO swears to it in the  
5 complaint.

6 MS. HABER: But the evidence is the sale.

7 MR. BAKER: No, but the --

8 MS. HABER: The evidence is the sale and if you  
9 look -- I'm pretty sure if you look at the criminal court  
10 complaint, that's what it says.

11 MR. BAKER: Well, he's charged in the criminal  
12 court complaint with conspiracy. The only evidence of a  
13 conspiracy is the CI. So the --

14 MS. HABER: Right.

15 THE COURT: Obviously, that's the key point. Is  
16 that right? That's what I am trying to have a -- I'll  
17 get to you. I just want to understand why you keep -- I  
18 mean I heard you in other times we've been here, you've  
19 said something along those lines. Why? I mean you have  
20 him having at least -- here we've gone over a couple of  
21 drug related interactions and this whole thing -- I mean,  
22 isn't the big picture, the really big picture, there's  
23 thirty-seven people indicted for basically a whole drug  
24 operation running out of these, what is it Cypress Hills  
25 Houses? I mean --

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1 MR. BAKER: Of which my client was not a part  
2 of and --

3 THE COURT: He can say that but isn't it just  
4 that the -- this is a question of whether they -- well,  
5 two things. The question was was there enough probable  
6 cause and obviously there was the indictment, so somebody  
7 believed there was but -- and I understand, you want to  
8 challenge that by finding this CI, but --

9 MR. BAKER: Well, Judge, the --

10 THE COURT: -- was the undercover having -- you  
11 know, Bozman is involved, right? I mean, I just don't --  
12 fortunately or unfortunately, the -- however one looks at  
13 the law, you don't need to have that much involvement in  
14 a big situation to be charged -- tagged with conspiracy,  
15 so --

16 MR. BAKER: I understand your Honor's point.

17 THE COURT: -- I mean --

18 MR. BAKER: Yes.

19 THE COURT: Right?

20 MR. BAKER: I understand what you're saying and  
21 I can't say that I necessarily agree with you because  
22 here's the thing, that is true --

23 THE COURT: That was a descriptive statement,  
24 that's not a quality -- that's not like a view on good,  
25 bad or indifferent --

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1 MR. BAKER: However, the --

2 THE COURT: -- you know, that's what it is.

3 MR. BAKER: Both Ms. Rios, the D.A., who was  
4 assigned to this case and who put this thing together,  
5 admitted during her deposition that the sole source of  
6 probable cause for the conspiracy was the confidential  
7 informant, as did the arresting officer.

8 THE COURT: How does that make sense? I mean  
9 there's so many -- I can't say -- I don't know the state  
10 version, so you tell me if it's different, right, but you  
11 need so many pieces to have a conspiracy that -- is the  
12 CI really the sole source, especially in light of having  
13 this information that we have just gone over that we do  
14 know about? Why would you ignore the undercover or the  
15 connection to Bozman or these conversations? I mean this  
16 is a --

17 MR. BAKER: Well, that's why when the D.A. --  
18 the way the D.A. handled the prosecution gave rise to a  
19 suspicion on my part and my client's part that there was  
20 something else going on behind the scene because if your  
21 Honor is correct -- following your Honor's line of  
22 thought there, if there was sufficient evidence to  
23 prosecute him for conspiracy without the CI, then there  
24 was no need for her to dismiss the charge when she came  
25 to court and said my CI is cognitively impaired. I'm

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1 dismissing the conspiracy charge.

2 I mean clearly that's a strong indication that  
3 they have no other -- that they didn't have faith in the  
4 other pieces of evidence that they had to sustain that  
5 charge.

6 THE COURT: Well, it doesn't mean that that was  
7 necessarily true when this whole thing started or isn't  
8 that -- I mean, she wasn't saying I can't go to the grand  
9 jury. She was saying I can't prove -- you know, whatever  
10 -- I can't prove beyond a reasonable doubt which is  
11 different from the probable cause. Right? I mean it's  
12 not the same analysis.

13 MR. BAKER: True but --

14 THE COURT: So, I mean, plenty of times you  
15 lose a witness and you know, you're not -- I mean I don't  
16 know what her approach is. Some people don't want to go  
17 to jail -- I mean, don't want to go to trial if they're  
18 not going to succeed but that doesn't tell us whether  
19 there was enough to have sustained the probable cause  
20 here.

21 MR. BAKER: Well, I couple my view of the  
22 evidence as was given to me by the D.A. which is  
23 incomplete -- I don't have everything --

24 THE COURT: Right.

25 MR. BAKER: -- with my client sitting across

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1 from me, looking at me in the eyes and telling me, "Mr.  
2 Baker, I'm innocent. I didn't do any of this. I was not  
3 a part of the conspiracy. I didn't sell drugs at  
4 anybody's house. I wasn't at Bozman's. I don't know  
5 Bozman. I wasn't at Bozman's house. I wasn't there. I  
6 didn't do it." And that testimony to me is persuasive.  
7 You know, I take him at his word.

8           You know, he maintained his innocence since day  
9 one. He's claimed that he's been framed. It certainly  
10 looks -- the way that the evidence got put together is --

11           THE COURT: All right.

12           MR. BAKER: -- you know, wouldn't stand up in a  
13 court of law. This is why they dismissed the case.

14           THE COURT: Okay. But that's not a malicious  
15 prosecution --

16           MR. BAKER: I know. That's what I am trying to  
17 find out, what the probable cause was because in order  
18 for my client --

19           THE COURT: All right.

20           MR. BAKER: -- to prove his matter here in this  
21 court, he's got to know what the probable cause was,  
22 everything.

23           THE COURT: All right.

24           MR. BAKER: He can't just know some of it, he's  
25 got to know the whole thing.



Proceedings

1 THE COURT: Look, a couple of questions. Do  
2 you need to know everything about the CI? Are there some  
3 parts of it that's more important to you than other?  
4 What's the --

5 MR. BAKER: Yes, I delineate it in my papers --

6 THE COURT: -- comments --

7 MR. BAKER: -- what I believe would help us --

8 THE COURT: Which seemed to me you want  
9 everything. I don't blame you for asking but, you know,  
10 I just want to know if there are things that you think  
11 are more important.

12 MR. BAKER: I think -- yes, I think without  
13 knowing the identity and address of the CI, I can dispose  
14 of that. If I get information about the substance of any  
15 statements provided by the CA -- CI, sorry, to the  
16 defendants and A.D.A. Rios regarding plaintiff, the dates  
17 on which the CI provided any such information, how it was  
18 he came to provide the information. Was he in custody?  
19 How did they get to this guy? Did he just come in off  
20 the street and say I got information on Goodloe? How did  
21 that information get developed? What consideration the  
22 CI received and how -- was he promised anything before he  
23 gave the statement? I think we need to have the grand  
24 jury minutes and any Rosario with respect to that.

25 And, you know, as I've said in my papers, you

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1 know, the law is clear that a court may deem information  
2 inaccessible to the plaintiff personally.

3 THE COURT: Uh-hum.

4 MR. BAKER: We can do it on an attorney's eyes  
5 only basis.

6 THE COURT: Okay. This is an aside but is that  
7 really practical here, I mean given the history of your  
8 experience with your client in this case which is, you  
9 know, you made a motion to withdraw and there was very  
10 problematic -- I'm raising it as a practical concern.  
11 You know, you have a challenging case --

12 MR. BAKER: Judge?

13 THE COURT: -- and a challenging client, you  
14 know?

15 MR. BAKER: The motion to withdraw was nothing  
16 more than I had to -- I have an obligation to my client.  
17 I have a responsibility as an attorney to -- I took an  
18 oath and anything that I put before this Court was based  
19 on the facts I had at the time. It was not a personal  
20 issue with the defendant -- with the plaintiff.

21 THE COURT: No, it's not personal but, you  
22 know, given -- if you were to have -- I mean, this is  
23 really just practical. If you're going to have  
24 information that your client doesn't have, what's going  
25 to happen here? I mean --

Proceedings

1 MR. BAKER: Well, I've got to prosecute --

2 THE COURT: -- maybe we can cross that bridge  
3 when we get there but --

4 MR. BAKER: You know, your Honor ruled on my  
5 motion to withdraw and I accept the ruling, my client  
6 accepts the ruling. We proceeded, you know.

7 THE COURT: Okay.

8 MR. BAKER: We put our motion in. You know, I  
9 intend to prosecute the case to the best of my ability  
10 regardless of whatever's happened in the past.

11 THE COURT: All right.

12 MR. BAKER: You know, if it has to be done, it  
13 has to be done.

14 THE COURT: Let me jump ahead. If you just  
15 accept for the sake of argument, the CI is absolutely  
16 cognitively impaired, you cannot oppose the person, then  
17 you think the record information that you just talked  
18 about, which would -- you know, so you wouldn't be able  
19 to say did they lie to you, how did you feel, were you  
20 under pressure? You think that the documents that you  
21 just went over still would be helpful to you?

22 MR. BAKER: Yes, and I think that in the event  
23 that it -- you know, he's cognitively impaired to that  
24 extent, then perhaps there's other people who have  
25 information that are close to him who I may want to talk

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1 to, you know, with his family members, his mother, his --  
2 I don't know, somebody else who may have been present. I  
3 don't know if there was anybody else present with him or  
4 anybody whose got any relevant knowledge of the  
5 information he gave or under what circumstances he gave  
6 the information.

7 THE COURT: Yeah, but so far we haven't talked  
8 about that in this case. You know, can you -- I mean can  
9 you get peripheral information? I mean, obviously A.D.A.  
10 Rios gave you some that wouldn't identify the CI -- or  
11 what if -- okay, so this all moving -- I mean, you could  
12 say attorney's eyes only and that would be for now but  
13 obviously, the point of this is for you to prove your  
14 case, and so there's probably going to be a summary  
15 judgment motion in this case, maybe you could agree that  
16 you filed it under seal and the district judge would be  
17 okay with that but eventually you get to trial. So this  
18 is really revealing, the CI's information, right? That's  
19 what this is about.

20 MR. BAKER: Yes.

21 THE COURT: I mean we could have some temporary  
22 hold but the CI --

23 MR. BAKER: Right.

24 THE COURT: Okay. So what's your response if  
25 the defendants really put information out that this is

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1 going to endanger the CI? That this is just -- and I  
2 mean, just even if you step back, and say look, this was  
3 a thirty-seven person indictment, so obviously it's not  
4 just, you know, Mr. Goodloe who could give me all kinds  
5 of assurances that I am not -- you know, I don't harbor,  
6 you know, any vindictiveness or any whatever it would be  
7 that one would feel about a CI. There's thirty-six other  
8 people who might be -- I don't know what happened in the  
9 case but on the -- just for the hypothetical, people are  
10 -- some were convicted, so people cannot be happy with  
11 the CI. So, you know, revealing somebody who is a CI --  
12 well, I don't know whether the CI's information was  
13 relevant to the whole thing or just maybe to Mr. -- I  
14 don't know but, you know, it's one investigation. The CI  
15 is involved. Thirty-seven people are indicted. So it's  
16 a big case. Serious allegations.

17 And one might suspect that that would put the  
18 person who now is cognitively impaired at --

19 MR. BAKER: Well --

20 THE COURT: -- serious risk of harm. So I mean  
21 what are we doing in this case?

22 MR. BAKER: Well --

23 THE COURT: I mean forget about the relevance?  
24 I'm just saying, you know, that's -- to the extent this  
25 is weighing, how do you look at what you have to show

Proceedings

1 versus putting somebody's life at risk?

2 MR. BAKER: Well, my client's life was put at  
3 risk. My client's freedom was --

4 THE COURT: But he's looking for money for, you  
5 know, something that happened in the past versus somebody  
6 else's safety. I mean, let's put it starkly --

7 MR. BAKER: That's true, Judge.

8 THE COURT: -- because it is that kind of  
9 situation.

10 MR. BAKER: Yes, it is --

11 THE COURT: I mean for this argument, it is  
12 that kind of situation, so what do you do? What do you  
13 think?

14 MR. BAKER: Well, I don't know what the -- I  
15 think that -- I would argue that my client's right to  
16 bring his suit and prove his case outweighs the concerns  
17 of the defendants. I think that there can be steps taken  
18 to protect him. The D.A.'s got all kinds of resources  
19 and the City has all kinds of resources. They use people  
20 for this type of thing, knowing full-well that they could  
21 be in danger. They could provide him with transport --  
22 transfer him somewhere, give him a new identity.

23 THE COURT: Okay. But what if the person is --  
24 right. So I mean look --

25 MR. BAKER: I mean --

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1 THE COURT: -- you know, on the one hand, the  
2 CI's identity was going to be revealed had this case gone  
3 to trial. So that was a trajectory.

4 MR. BAKER: Yes.

5 THE COURT: But -- at least from the version of  
6 events that you said with regard to the case being  
7 dismissed, in the interim of the criminal case, something  
8 changed with the CI. So the person is, you know, no  
9 longer whatever -- they now -- he or she now has this  
10 problem. So whatever -- I mean, what WITSEC --

11 MR. BAKER: Well, Judge, I'll say this --

12 THE COURT: -- or whatever you're proposing may  
13 not be something -- I mean, I don't know if it would ever  
14 be practical for something that's being revealed in a  
15 civil case but take it that this person's situation, you  
16 know, is much, much worse. Not somebody who can go and  
17 start a new life, right? I mean the City's position has  
18 been the person is cognitively impaired and you know from  
19 the criminal case that that was something that the D.A.  
20 raised.

21 So if you take it that that was in code for  
22 we're having a problem, and it's actually a description  
23 of the situation, then what do you do?

24 MR. BAKER: Well, I would --

25 THE COURT: How do you weigh -- how do you

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1 think I should be weighing the considerations? There is  
2 no simple, you know, give him money to start a new life  
3 kind of thing, like this is the fallout, because he --  
4 you know, he or she, I don't know what it is, went off --  
5 you know, didn't go off into WITSEC or whatever the state  
6 version is.

7 MR. BAKER: Okay. Well, there are  
8 circumstances under which CI's identities are revealed in  
9 the criminal context. I know there's a difference  
10 between somebody's liberty is at stake there, whereas  
11 here, Mr. Goodloe is seeking money. But there are steps  
12 that could be taken similar to the steps that are taken  
13 in that scenario.

14 The fact that the person is cognitively  
15 impaired, you know, is a factor that will come into play  
16 but it doesn't change the fact that there could be steps  
17 taken to protect that person. I'm not sure if that  
18 particular CI provided information against anybody other  
19 than Carl Goodloe.

20 THE COURT: I know. You and I, we know what we  
21 know. I don't know if the City really knows much more  
22 than we know.

23 MR. BAKER: But I think that there are steps  
24 short of revealing the identity that may help the  
25 plaintiff to get closer to proving their case and maybe



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1 put a little bit more pressure on the City to settle the  
2 manner in a fair way.

3 THE COURT: Okay. What happens at trial? So  
4 say you're entitled to this information but because of  
5 this privilege and these concerns, you can't get that  
6 information, do you get anything at trial and I have not  
7 looked at this, so I have no idea, so this is really a  
8 question to the floor --

9 MR. BAKER: Well, if the --

10 THE COURT: -- do you get a missing witness  
11 charge? Do you get anything?

12 MR. BAKER: Yeah, I think so.

13 THE COURT: Yeah. So, right.

14 MR. BAKER: I think the fact that this goes --

15 THE COURT: I mean, what would you ask for?  
16 What do you want at trial? Obviously, I'm not the trial  
17 judge but I'm just seeing where this whole thing goes.

18 MR. BAKER: I would want --

19 THE COURT: Because you're going back to the  
20 point that this is a compelling need question.

21 MR. BAKER: Right. I would ask for an adverse  
22 inference against the City that if this witness had been  
23 called, that he would have given testimony that would  
24 undermine their position and it would support the  
25 plaintiff.

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1 THE COURT: Right. All right.

2 MR. BAKER: You know, they -- we have to prove  
3 our case and we're hamstrung in our ability to do that by  
4 the withholding of the information and by the fact that  
5 this witness became cognitively impaired, I mean  
6 that's -- I have empathy for that person as a human being  
7 but that's the person that put my client in jail and  
8 deprived him of his liberty and that's the person that we  
9 believe colluded --

10 THE COURT: Well, we don't know but that's  
11 possible.

12 MR. BAKER: Right.

13 THE COURT: Well, we don't know. I mean --

14 MR. BAKER: What I do know is that my client is  
15 asserting his innocence and he'll say in open -- he'll  
16 get up and testify at trial, I'm innocent. These people  
17 framed me. So then it's on them. Come forward with the  
18 evidence that my client's guilty of conspiracy. If they  
19 can't do it, they lose.

20 THE COURT: All right. So the problem -- well,  
21 the thing we don't know here and I still don't really  
22 understand, is the confidential informant's testimony  
23 really relevant -- not relevant, it is relevant but is it  
24 necessary and was it key to the conspiracy because there  
25 are just -- well, even in the brief description we've

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1 gone over, allegedly, according to the undercover,  
2 multiple interactions with the plaintiff and so why is  
3 that not enough -- at least a couple of interactions and  
4 related to drugs. And given the overall idea that the  
5 sale -- which seems to be anyway, that the sale of drugs  
6 at this housing project was part of the -- a big sales  
7 operation and that's what all these folks were indicted  
8 for, then the fact that their allegations that Mr.  
9 Goodloe was involved in that, isn't that enough to bring  
10 him in at least in good faith, into the -- well, whatever  
11 -- good faith is not a standard.

12 MR. BAKER: No.

13 THE COURT: There was reason to believe that he  
14 was part of the conspiracy and then, you know, this was  
15 -- this whole operation seems like -- I don't know  
16 actually, I shouldn't say that -- I don't know what  
17 happened at the grand jury.

18 MR. BAKER: Judge, my answer to that question  
19 is --

20 THE COURT: Go ahead.

21 MR. BAKER: -- a resounding no.

22 THE COURT: Why?

23 MR. BAKER: And that's why I put all of that  
24 information in the affirmation because if you look  
25 closely at it, it's a house of cards. There's no way --

Proceedings

1 this is what they theorize. The undercover officer  
2 claims that he accurately and reliably identifies my  
3 client, eleven months after he makes a purchase or ten  
4 months after he makes a purchase, when he couldn't I.D.  
5 my client minutes after watching the sale in September of  
6 '05 backing up the other undercover, okay?

7 THE COURT: So that -- all right.

8 MR. BAKER: And then in January, January 26th,  
9 he --

10 THE COURT: That (indiscernible) seem so crazy,  
11 go ahead.

12 MR. BAKER: -- allegedly buys drugs from the  
13 same person and doesn't recognize him as the person who  
14 sold drugs in September. And now in between January of  
15 '06, the sale --

16 THE COURT: Uh-hum.

17 MR. BAKER: -- and the November 30th  
18 interaction, he's done hundreds of sales with hundreds of  
19 different people, a lot of whom look exactly like my  
20 client.

21 THE COURT: Do we know it's hundreds of people?

22 MR. BAKER: Well, maybe not hundreds. Let's  
23 say thirty.

24 THE COURT: And multiple sales or multiple  
25 people?

Proceedings

1 MR. BAKER: Multiple sales, multiple people,  
2 multiple sales on the same day.

3 THE COURT: But we don't -- I mean, we don't  
4 actually know how many repeat players there were, that's  
5 the --

6 MR. BAKER: No, we don't even know -- the  
7 undercover testified --

8 THE COURT: I mean your point is nobody can  
9 remember this and that's sort of a fundamental part of  
10 your argument. I'm like, I don't -- it doesn't -- I'm  
11 not somebody with an incredible memory but I know plenty  
12 of people who have very good memories and they meet  
13 somebody and they remember them. You're alleging it's  
14 implausible and I don't know that it is.

15 MR. BAKER: I think that's for the jury to  
16 decide, Judge.

17 THE COURT: Well, but you're saying you're  
18 compelling -- a compelling need because the testimony is  
19 so suspect.

20 MR. BAKER: Well, that's the reason because  
21 your Honor asked me about that isn't there other  
22 evidence --

23 THE COURT: Yeah. No, I understand your  
24 argument. I just don't know how much I - how convincing  
25 it is.

Proceedings

1 MR. BAKER: So the other evidence of the  
2 conspiracy --

3 THE COURT: All right.

4 MR. BAKER: -- then is the undercover's  
5 testimony which is incredible and officer -- arresting  
6 officer Cooke's testimony which is incredible. Nobody is  
7 going to believe that this guy sat a block away -- if you  
8 look out the window and look a block down the street --

9 THE COURT: Right.

10 MR. BAKER: -- and you look at somebody walk by  
11 for like half a minute, he's going to try to convince you  
12 that he recognized Carl Goodloe through all that traffic,  
13 trees, wires, telephone poles --

14 THE COURT: Right.

15 MR. BAKER: -- from the backseat of a car for  
16 like a minute when the transaction, according to the  
17 undercover, occurred behind walls of the building.

18 THE COURT: Right.

19 MR. BAKER: It's incredible. It's absolutely  
20 incredible. I submit it's a lie.

21 THE COURT: Uh-hum.

22 MR. BAKER: These officers are lying about it.

23 THE COURT: All right. So Ms. Haber might die  
24 of frustration over there. Yes, ma'am?

25 MS. HABER: No, I just want to make clear that

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1 the undercover was not involved with the buy in  
2 September. He didn't see Carl Goodloe. There's no  
3 mention of him in the buy report because he didn't  
4 observe him. That's why he couldn't identify him.

5 The second part is I mean as your Honor is  
6 aware, it's our position that this is totally irrelevant  
7 to the probable cause analysis. All of this information  
8 about, you know, or this opinion of plaintiff being  
9 innocent is just merely that. It's just pure  
10 speculation. The evidence shows right now that he was --  
11 the undercover bought crack cocaine from a person he  
12 identified as Carl Goodloe and just so the --

13 THE COURT: Which sale are we talking about?  
14 You're talking --

15 MS. HABER: The original one in January 2006.

16 THE COURT: Okay.

17 MS. HABER: That's what this case is about, is  
18 he bought under -- he bought crack cocaine from Carl  
19 Goodloe in Larry Bozman's apartment on January 25th,  
20 2006.

21 THE COURT: And at the time, he's identified as  
22 Hood, right?

23 MS. HABER: Correct.

24 THE COURT: Uh-hum.

25 MS. HABER: Correct. Because the undercover

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1 didn't know who he was. He identified him as J.D. Hood.

2           Then later on in November of 2006, they're  
3 walking in the -- within the housing project and he runs  
4 into the individual that the undercover knows as J.D.  
5 Hood, and he says to Cooke, "Yeah, that was J.D. Hood."  
6 Cooke knew him as Carl Goodloe because Detective Cooke  
7 had done a prior investigation called The Narcotics Plan  
8 in which he was involved with investigating narcotics in  
9 the vicinity of the 75th Precinct. This is what he  
10 testified to at the deposition. He knew Carl Goodloe.  
11 Carl Goodloe was popular in the area. Carl Goodloe  
12 testified at his deposition that he stayed in the Cypress  
13 Hill Houses four to five nights a week during this time  
14 period. He was there all the time. Detective Cooke knew  
15 who he was.

16           He had also been arrested like a total of  
17 twenty-seven times. I can't remember how many times  
18 before -- I think it's in my papers somewhere -- he was  
19 arrested in the 75th Precinct at least seven times before  
20 the January incident or before the November incident and  
21 Detective Cooke, before he was assigned to narcotics  
22 worked in the 7-5 Precinct. Detective Cooke knew who  
23 this guy was.

24           THE COURT: Okay. So what's your -- one or two  
25 question to start out with.



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1 MS. HABER: Sure.

2 THE COURT: What's your view of how there's  
3 enough information here to tie him to the conspiracy  
4 without the CI?

5 MS. HABER: My information is purely that, your  
6 Honor, what you were discussing with Mr. Baker, which  
7 would be the sale and the related drug transactions. And  
8 the fact that he was -- Larry Bozman was a target of the  
9 conspiracy investigation and Larry Bozman introduced the  
10 undercover to plaintiff. That's enough on its own to  
11 establish the conspiracy and the law says that a  
12 conspirator is guilty of the first degree offense of  
13 conspiracy, if he's not only unaware of the age of the  
14 young conspirator but does not even know of that  
15 individual's existence.

16 THE COURT: Right.

17 MS. HABER: So I mean I think it was exactly  
18 what your Honor was saying that they had the sale. They  
19 had the contact with him. They knew he was engaged in  
20 this narcotics related transaction. I mean, I would  
21 argue it was a sale in Larry Bozman's apartment.

22 THE COURT: Right, (indiscernible).

23 MS. HABER: And then just so the Court is  
24 aware, it's my understanding the CI provided historical  
25 testimony -- that's what they call historical testimony

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1 where he or she explain the layout of the building, of  
2 the complex, that kind of stuff and A.D.A. Rios testified  
3 that the CI identified Carl Goodloe as a worker in this  
4 drug hierarchy that existed at Cypress Hills. And she  
5 testified that was what it was.

6 And my understanding is also that most of the  
7 information obtained from the CI was obtained during  
8 interviews with the A.D.A. and Detective Cooke. It was  
9 all interviews and so --

10 THE COURT: What does that mean?

11 MS. HABER: They got the information -- I don't  
12 know that there's even any paperwork that we would turn  
13 over, other than the grand jury minutes which I can't  
14 turn over. He has to make an application to the state  
15 court which hasn't been done. I mean, we don't have  
16 possession. The City of New York does not have  
17 possession of the grand jury minutes. The state court  
18 has that. So that's nothing that we could turn over.

19 MR. BAKER: I'll have to do an unsealing order,  
20 I guess.

21 MS. HABER: But also --

22 THE COURT: Hang on.

23 MS. HABER: -- Rehberg --

24 THE COURT: Okay, just hold that thought for  
25 one second.

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1 MS. HABER: Sure.

2 THE COURT: All right. So you're -- I'm just  
3 thinking about what you're agreeing. Your view is that  
4 there's enough here -- okay. So this is -- just put  
5 Rehberg aside but this idea -- like from your perspective  
6 with regard to the malicious prosecution claim, what is  
7 it -- plaintiff's view is basically if I can challenge  
8 what's being said in part by the CI's -- evidence about  
9 the CI, then I could show that the officers were lying  
10 and that they lied before the grand jury, they lied to  
11 the grand jury, they lied after the grand jury and that's  
12 why Mr. Goodloe was in prison or in jail for so long.

13 And you make the argument -- and we don't even  
14 know what the CI -- we don't care what the CI said, I  
15 have enough information to show there was probable cause  
16 but that is if you accept what the officers are saying  
17 and plaintiff doesn't.

18 So how are we supposed to look at your point  
19 that there's enough probable cause and I'm was talking to  
20 Ryan, the law clerk, yesterday. I'm like what's the  
21 model that you use, right? Because -- and the only one  
22 that I could think of which seems to fit what you're  
23 describing is when you're testing a search warrant and  
24 there's a challenge to the warrant and something is found  
25 to be whatever, wrong or improper, unless there's a real

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1 scandal related to it, what you do is cross-out  
2 everything that's questionable and you look at it and you  
3 say is there enough here to justify the warrant. And if  
4 the warrant still -- you know, if that information's  
5 enough to have probable cause to do the search, your  
6 warrant is fine. It doesn't matter that there are all  
7 those other problems.

8           So I mean it seems like that's along the lines  
9 of what you're saying. You're saying you don't care what  
10 the CI said. We know these facts here that Cooke and the  
11 undercover knew about the Bozman-Goodloe interaction and  
12 that's enough to have probable cause and I don't have to  
13 ever look at the other and it doesn't matter if at some  
14 point along the way, somebody might have believed, you  
15 know, either the CI was saying something contradictory or  
16 -- which I don't know if that seems that likely, or  
17 collectively I could show lots of inconsistencies between  
18 the undercover and the CI or -- I put them all up there,  
19 and nobody -- you know, basically the jury believes Mr.  
20 Goodloe and thinks the officers are, you know, not  
21 telling the truth but whatever, that's -- I mean that's  
22 another possibility.

23           But I'm like what framework are we supposed to  
24 look at this to make the evaluation about whether for  
25 proving malicious prosecution the plaintiff needs the

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1 CI's testimony? Or, you know, even that it would -- I  
2 mean your argument is first tier, not relevant. Second  
3 tier, doesn't meet compelling need or even -- okay, but  
4 so --

5 MS. HABER: Right.

6 THE COURT: You know --

7 MS. HABER: I mean that's --

8 THE COURT: -- how do we frame it?

9 MS. HABER: Well, I think the main, larger  
10 frame would be that the indictment creates a presumption  
11 of probable cause.

12 THE COURT: It's a rebuttable presumption. So  
13 he wants to --

14 MS. HABER: It's a rebuttable, right.

15 THE COURT: -- rebut.

16 MS. HABER: Right. And he has -- I would argue  
17 that he has enough information through other sources,  
18 i.e., A.D.A. Rios and Detective Cooke to try to rebut that  
19 presumption. They have testified basically what the CI  
20 -- what they learned from the CI.

21 THE COURT: Okay. But see that's not saying  
22 though it's not relevant. That's saying it doesn't meet  
23 the compelling need test. Basically, you should not  
24 endanger the CI because they have enough. Your  
25 preliminary argument is --

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1 MS. HABER: Well --

2 THE COURT: -- nothing, it's a lot of noise  
3 about nothing.

4 MS. HABER: Right. And my preliminary  
5 argument, there's independent probable cause to charge  
6 conspiracy aside from what the CI set.

7 THE COURT: And I guess my question is what  
8 does independent really mean when you're looking at it?  
9 Is it -- is there some presumption that I say okay, these  
10 witnesses are credible or I'm supposed to assume that  
11 they're credible or, you know, kind of what I said about  
12 the -- we assume they're credible and we -- you know,  
13 like the way you do a search warrant, cross-out  
14 everything that you don't need and that's how you look at  
15 it or, you know, or not --

16 MS. HABER: And --

17 THE COURT: I mean, his --

18 MS. HABER: -- I don't think this is a  
19 credibility determination at this point and I think all  
20 of these facts contained the plaintiff's affirmation or  
21 Mr. Baker's affirmation missed the whole point of the  
22 relevance --

23 THE COURT: Okay.

24 MS. HABER: I just -- this is not --

25 THE COURT: Tell me what it is because I'm not

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1 sure I get it or at least --

2 MS. HABER: I think because of the fact of a  
3 sale with the co-conspirator is enough to establish the  
4 probable cause of a conspiracy. And then in order to --  
5 and I know he's disputing that that happened but a grand  
6 jury believed that it happened and we have the  
7 indictment. So at this point --

8 THE COURT: Well, we don't know that. Right?  
9 We have two things; one, we don't know if the CI  
10 testified -- right? I mean --

11 MS. HABER: Well, we don't know about the CI  
12 but we know that the undercover and Detective Cooke  
13 testified at the grand jury and they --

14 THE COURT: But you're saying it's enough,  
15 right?

16 MS. HABER: Yes, to establish the probable  
17 cause to prosecute.

18 THE COURT: Uh-hum.

19 MS. HABER: And there's also no intervening  
20 fact that vitiated the probable cause from the date of  
21 the arraignment --

22 THE COURT: Right, right.

23 MS. HABER: -- until the date the charges were  
24 dismissed, as far as I know.

25 MR. BAKER: Well, there's a not guilty plea.

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1 MS. HABER: But that doesn't vitiate probable  
2 cause.

3 MR. BAKER: Well, you know, if this is --  
4 probable cause doesn't exist if it's a lie and I would  
5 compare this to a situation where you have --

6 THE COURT: Well, now we're getting into  
7 Rehberg but go ahead.

8 MR. BAKER: -- you have, for example, a  
9 statement that's obtained unlawfully. If that's what  
10 probable cause is based on, that statement gets  
11 suppressed. You don't have probable cause, it doesn't  
12 exist.

13 THE COURT: Well, that's basically the search  
14 warrant comparison.

15 MR. BAKER: And the same thing here with the  
16 identification.

17 THE COURT: Right.

18 MR. BAKER: If that had gone to a hearing --

19 THE COURT: He's saying it's a lie and --

20 MS. HABER: But there's no evidence right now  
21 that it's a lie.

22 THE COURT: Well, okay, but take it -- put  
23 aside that Mr. Goodloe is saying, what about the --  
24 basically I think where Mr. Baker is going with it is if  
25 I could show you a physical picture of the layout of this



## Proceedings

1 courtyard/street, it would show that Officer Cooke's  
2 statement is absolutely impossible. It does not -- it's  
3 physically an impossibility, right? And so that would  
4 undermine what Cooke said.

5 MS. HABER: At which point then maybe the sale  
6 of cocaine on January 25th, 2006 would be in question and  
7 then maybe he could establish that they're lying and then  
8 there would be no probable cause for the conspiracy. You  
9 know, if we follow that road, then he's made his case and  
10 the CI has nothing to do with it still.

11 THE COURT: I know, but that's --

12 MS. HABER: I mean --

13 THE COURT: But that goes to compelling need.  
14 That doesn't go to relevance. I have a very basic  
15 question which is you say there's enough probable cause  
16 and what does that mean? Does that mean you say there  
17 was -- it's just a prima facie sort of like as if it were  
18 a pleading, right? We've said enough to the grand jury.  
19 I mean, this may be a very basic question why it doesn't  
20 seem to have a -- we've said enough to the grand jury.  
21 We have offered information about every point of a  
22 conspiracy, you know, that there was an overt act, that  
23 there was an agreement, you know, and all the different  
24 factors or elements and that's it. That's all we had to  
25 do and obviously the grand jury believes it because they

Proceedings

1 indict him. And there's nothing else. Nothing else is  
2 relevant.

3 MS. HABER: And well, I mean --

4 THE COURT: And no other information is needed  
5 and --

6 MS. HABER: And --

7 THE COURT: -- then the question bounces back  
8 to Mr. Baker is like they're all liars, basically.  
9 That's sort of the bottom line here. That's what his  
10 position is because he's saying if his client -- you  
11 know, they have to be lying because they're saying things  
12 and his client, if you take his client's position is he  
13 has nothing to do with this. So it's not even like a  
14 question of well, I viewed it this way. It's like I  
15 wasn't there. I didn't sell drugs. I didn't do any of  
16 these things, right?

17 So if they're all lying, what do you have? I  
18 mean it's got to be -- how do you rebut the presumption,  
19 is I guess the question, right? Not in this particular  
20 case. What does it mean to rebut a presumption if you've  
21 offered evidence that hit on every point of the charge?

22 MS. HABER: I mean I think by attacking  
23 credibility. I mean, or showing some piece of evidence  
24 that the -- for example, the cops planted evidence.

25 THE COURT: Right.

Proceedings

1 MS. HABER: They put crack cocaine in the  
2 plaintiff's pocket and there's some --

3 THE COURT: All right.

4 MS. HABER: -- witness that said that they did  
5 that.

6 THE COURT: Okay.

7 MS. HABER: That might rebut the presumption of  
8 probable cause.

9 THE COURT: All right. So --

10 MS. HABER: There's nothing like that here,  
11 your Honor. There's nothing like that here.

12 MR. BAKER: Well, first of all, the D.A. chose  
13 to put the CI in the grand jury and elicit testimony  
14 about my client. If they didn't need to do that, then  
15 they shouldn't have done it but they did.

16 THE COURT: Uh-hum.

17 MR. BAKER: And they're telling me at their  
18 depositions that we based -- the probable cause for the  
19 conspiracy was based on the CI. They didn't mention  
20 anything about the interaction with Bozman. So they're  
21 telling me under oath that was what they based their  
22 assessment on.

23 THE COURT: That's what you're saying how you  
24 read Rios' statement?

25 MR. BAKER: Yes. So there is a compelling

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1 need. We need to know what that -- and here's another  
2 thing. We need to know, for example, how did the CI even  
3 get into the D.A.'s Office? Did Cooke bring him in? Did  
4 Cooke make the arrest of the CI? Did Cooke go look for  
5 the CI and find the CI and bring him in for this purpose?  
6 How did he come to be talking to the D.A. about Carl  
7 Goodloe?

8           These are all questions that they refused to  
9 answer and I think it's highly relevant to determine  
10 whether or not there was perjury and deceit and fraud, et  
11 cetera, that caused my client to be indicted and to rebut  
12 the presumption, we need that information.

13           THE COURT: All right. Other thoughts about  
14 what it means to be able to rebut as presumption or -- I  
15 mean, you've said over and over again in your papers and  
16 in here, you've had enough information and we can ignore  
17 the CI. It's just not -- you don't have to factor it in.  
18 And my question is, why is that argument correct?

19           MS. HABER: Well, I just think because it goes  
20 back to the independent probable cause question where  
21 based on just the sale, which is from this point  
22 undisputed. Unfortunately, Larry Bozman is deceased.  
23 You know, he probably would have been a good witness in  
24 this case but based on the evidence that we have to date,  
25 there's an independent probable cause that supports the

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1 indictment. That's the argument.

2 And assuming arguendo, it is relevant --  
3 assuming arguendo, it is relevant to prove the fraud and  
4 the perjury, the law enforcement and informer's privilege  
5 applies and there has not been a showing of compelling  
6 need in this case, based on the fact that there is the  
7 independent probable cause.

8 THE COURT: Yes, but that's not circular.

9 MS. HABER: But at the same time, there's such  
10 a slippery slope. If we start allowing plaintiffs to,  
11 you know, to identify, depose, produce for trial,  
12 confidential informant, law enforcement --

13 THE COURT: Look, to be clear, I think this is  
14 a huge problem. That's why I have had you here an hour.  
15 I think that this -- I agree. I mean whatever one's view  
16 of whether CI's is a good way to go or not, the fact is  
17 that there was a CI in this case. If they had followed  
18 standard practice, this person was promised relative, you  
19 know, confidentiality and then the information provided  
20 to me is that this person is actually cognitively  
21 impaired. It's not a code, it's a problem.

22 And so I'm very concerned about this person's  
23 safety if his -- his or her, I don't know -- information  
24 is revealed. And so compelling has to be compelling and,  
25 you know, where are we with this? So let's see.

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1           From the City's view, what do you think happens  
2 at trial if this information is not produced? I mean  
3 this person's --

4           MS. HABER: I mean I --

5           THE COURT: -- a witness, I mean, maybe unavail  
6 -- I mean this might be one of those, you know, actually  
7 unavailable kinds of things. I don't know, you know, but  
8 -- I don't know what posture --

9           MS. HABER: I mean I think --

10          THE COURT: -- does it put this case in?

11          MS. HABER: I mean, I think we would move for a  
12 protective order again at trial.

13          THE COURT: Yeah, yeah, yeah. I'm talking  
14 about the question about the instruction to the jury  
15 about the fact that the person who would have information  
16 is not here.

17          MS. HABER: Oh, then I would argue that it  
18 would be an unavailability, not an adverse inference.  
19 You know, there's a difference --

20          THE COURT: Because of being a CI or because of  
21 the cognitive impairment?

22          MS. HABER: Both.

23          THE COURT: All right. But then the records  
24 available --

25          MS. HABER: Both.

Proceedings

1 THE COURT: -- about the person that would not  
2 be -- you know, that probably some of the records are  
3 kept in the regular course of business.

4 MS. HABER: I mean --

5 THE COURT: And you're not giving any  
6 information about the person, so --

7 MS. HABER: I mean, I think everything he's  
8 asking for in terms of relevance like the -- you know,  
9 the person's name, the person's address. None of that is  
10 relevant to anything. You know, so there's -- if -- are  
11 we saying if the motion was granted and if the CI were to  
12 testify at trial what --

13 THE COURT: No, the other way around. If your  
14 motion is granted now --

15 MS. HABER: His motion or --

16 THE COURT: Your -- well, yeah, sorry.

17 MS. HABER: Yeah, his.

18 THE COURT: Yeah, his motion, the motion's  
19 denied. He doesn't get the information based on your  
20 assertion of the privilege.

21 MS. HABER: Uh-hum.

22 THE COURT: But I find that it's relevant and  
23 if there were to this privilege, the information or  
24 concern for the person's safety, that the -- which is not  
25 outweighed by the argument, I mean does -- I just want to

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1 know, does anything happen at trial from your view or  
2 just --

3 MS. HABER: I mean --

4 THE COURT: -- you know, we all sort of act  
5 like it never happened.

6 MS. HABER: -- I mean if there's a protective  
7 order, then there would be no -- you know, if there's a  
8 protective order, then he would be precluded from  
9 presenting testimony at trial. That would be the Court  
10 order.

11 THE COURT: Uh-hum.

12 MS. HABER: And discovery or at trial or maybe  
13 we'd have to do this again at trial, but -- at the time  
14 of trial but that's -- you know, we're asking for a  
15 protective order to prevent him from having any --

16 THE COURT: No, no, I understand that.

17 MS. HABER: Yeah.

18 THE COURT: But he would --

19 MS. HABER: So for the purpose of trial --

20 THE COURT: -- not have the information but  
21 does he get -- I mean, you're putting him at a rock and a  
22 hard place. I mean, he --

23 MS. HABER: I mean --

24 THE COURT: -- doesn't know -- none of us, at  
25 least you don't have the grand jury minutes, none of us



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1 really know -- you know, Rios is the closest that  
2 anybody's gotten here to knowing whether this person -- I  
3 mean, who knows? The CI may not have -- maybe he was  
4 really going on about Bozman. I mean, he was going on  
5 about the guy in 3E. Who knows? I don't know, it might  
6 have nothing to do with it though. You don't know.

7 So does he get an inference? Does he get  
8 instruction? Does he get nothing?

9 MS. HABER: I think he gets nothing but he  
10 would be able to cross-examine Rios about it.

11 THE COURT: Uh-hum.

12 MS. HABER: And Detective Cooke.

13 THE COURT: All right. Let me ask you --

14 MR. BAKER: That got me nowhere at the  
15 deposition.

16 THE COURT: Let me ask, what about -- is there  
17 any -- this is the inverse of the question that I asked  
18 Mr. Baker, is there anything -- any more -- I mean, Rios  
19 gave some information. So in light of that, is there  
20 anymore information that you have that you think could be  
21 safely provided? For example, one thing that Mr. Baker  
22 seems to think is important is the order in which the or  
23 dates by which or when the CI provided -- became  
24 involved, I mean, you know, or mentioned his client, you  
25 know and -- I can't say I appreciate every nuance but,

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1 you know, at least that would give him something. I mean  
2 obviously if -- well, I don't know. I mean that could be  
3 a myriad of possibilities which might reveal the CI  
4 identity by a hint, right? Like I was standing there --  
5 I'm not telling you who I am but -- well, you know --

6 MS. HABER: Right.

7 THE COURT: Although Mr. Goodloe says he wasn't  
8 there, so --

9 MS. HABER: Right.

10 THE COURT: -- who knows? But you get the  
11 point. Is there some way to get closer to, you know,  
12 reduce the amount of information that's being withheld  
13 while still addressing your very real concern that this  
14 person is in a vulnerable position?

15 MS. HABER: I mean, I think that's the concern,  
16 your Honor, is revealing information that could identify  
17 -- like dates could definitely identify -- even though  
18 Mr. Goodloe said he was not there, maybe one of the co-  
19 conspirators was there.

20 THE COURT: Right.

21 MS. HABER: Or taking this allegation as true,  
22 you know, it could be easy to identify --

23 THE COURT: Right.

24 MS. HABER: -- but --

25 THE COURT: What about the other version that -

Proceedings

1 - the other kind of dates which was --

2 MS. HABER: When the CI --

3 THE COURT: Talked to the police --

4 MS. HABER: -- became involved?

5 THE COURT: Right. Became involved, talked to

6 the D.A.

7 MS. HABER: Uhm.

8 THE COURT: Like things that are not -- are

9 relevant to the way --

10 MS. HABER: Your Honor?

11 THE COURT: -- the facts played out in this  
12 case, but wouldn't tell you anything about that person.

13 MS. HABER: Right.

14 THE COURT: You know, I mean just -- like if  
15 it's like I was at the 7-5 and I talked to Officer so and  
16 so, I mean, that could be John Doe, Jane Doe, you know,  
17 Richard Doe, I don't know, Roe or whoever that is. You  
18 know and --

19 MS. HABER: I mean, your --

20 THE COURT: -- it wouldn't tell you anything  
21 but at least from what I can gather from our conversation  
22 today in these papers, might give the plaintiff more to  
23 work with and we would, you know, reduce the pressure on  
24 getting the particulars. And I don't know it's -- it  
25 would narrow what we're talking about anyway.

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1           And then the other -- well, sorry, that's one  
2 question. Do you want to think about it?

3           The other question is I was talking about the  
4 grand jury minutes and Rehberg in a minute but --

5           MS. HABER: Right. Regarding your first  
6 question, I mean in full disclosure, I do not have any  
7 documents at all. And I --

8           THE COURT: You don't have them and you don't  
9 think they exist or what --

10          MS. HABER: I do know that the NYPD  
11 confidential informant unit does have a file with the  
12 identity, that kind of thing.

13          THE COURT: Uh-hum.

14          MS. HABER: That I do know but they do not  
15 provide it to us. The only -- it's very -- they're very  
16 careful on how those documents are handled, of course.

17          THE COURT: Okay. But just so I understand,  
18 does that mean any document -- is that just the ultimate  
19 key that says, you know, CI's Vera Scanlon or is that  
20 something --

21          MS. HABER: Right, it's the key.

22          THE COURT: Okay.

23          MS. HABER: And it has nothing to do with Carl  
24 Goodloe.

25          THE COURT: Okay.

Proceedings

1 MS. HABER: But --

2 THE COURT: But you have documents that are the  
3 investigatory file or no, those are with --

4 MS. HABER: No.

5 THE COURT: Do they have them?

6 MS. HABER: I mean everything that --

7 THE COURT: How does this work?

8 MS. HABER: As far as I know, I do not believe  
9 that there are any documents about the CI, as far as I  
10 know. We're continuing to search but I believe that the  
11 information was passed on during the interviews.

12 THE COURT: And there are no notes.

13 MS. HABER: No.

14 THE COURT: Or it would be the D.A.?

15 MS. HABER: It would be the D.A. and I don't  
16 know if there are any but I mean another option if your  
17 Honor wanted more information for potentially to bring  
18 A.D.A. Rios in for an in camera interview or something of  
19 that nature or the NYPD --

20 THE COURT: Right.

21 MS. HABER: -- unit could come in with that  
22 file for -- I mean, they would bring the original. They  
23 won't even give it to me to give to you. And we could do  
24 an in camera review but I do not think that there's  
25 anything --

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1 THE COURT: But you're saying that to your  
2 knowledge, and you could tell me if your experience is  
3 otherwise, that file's just going to say it's Erica Haber  
4 or Mr. Baker or Vera Scanlon. It's not going to tell you  
5 anything --

6 MS. HABER: It --

7 THE COURT: And maybe the pedigree but it's not  
8 going to tell you --

9 MS. HABER: And I think it might contain  
10 information --

11 THE COURT: About --

12 MS. HABER: -- I don't know because I've never  
13 seen one but it might --

14 THE COURT: -- being paid or something?

15 MS. HABER: Right, about that or when the CI  
16 was registered and that kind by who and that kind of  
17 thing but I don't see how that's relevant to the probable  
18 cause analysis.

19 THE COURT: Yeah, but in my view, we're not  
20 necessarily up to that yet.

21 MS. HABER: Okay.

22 THE COURT: The question is whether -- what  
23 about the file, the regular file in this case? Does it  
24 say hypothetically, the CI reported on -- this is really  
25 hypothetical, so -- like the CI reported that he viewed

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1 the January 6th transaction -- January '06 transaction  
2 and then there's a DD5 or whatever, the interview form is  
3 or anything like that.

4 MS. HABER: Not to my knowledge.

5 THE COURT: Like the regular paper -- because  
6 we're not talking about the CI --

7 MS. HABER: No, not --

8 THE COURT: -- and you have that file?

9 MS. HABER: And the DD5 -- yes, I have the --  
10 there's not -- there are DD5s for pertaining to  
11 confidential informants but I do not believe it's the one  
12 at issue.

13 THE COURT: Okay.

14 MS. HABER: I would have to go through -- I  
15 want to check again. I don't want to make a blanket  
16 statement like there are none at this moment but I'm  
17 pretty sure there are not because like I said, I think  
18 all of these were interviews with the D.A. I think it  
19 was like a D.A. --

20 THE COURT: Dealt with the CI.

21 MS. HABER: -- led charge, right? Right?

22 MR. BAKER: I would just observe --

23 THE COURT: Circle back?

24 MR. BAKER: -- that, you know, this is an  
25 operation involving thirty some-odd defendants, probably

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1 numerous CIs, numerous buys. It would shock me if the  
2 D.A. claimed or the police claimed that they didn't have  
3 a single note of a conversation they had with the CI  
4 about anybody in this case. I mean, how do they keep  
5 track of things? HOW do you keep track of who is saying  
6 what about who unless you make a note about it? And if  
7 their position is that there are no notes and there are  
8 no Rosario, then let's go to trial and I will put that in  
9 front of the jury and let them consider that as another  
10 factor in the credibility of the defendants. Because to  
11 me, it just sounds insane that there's no notes of any  
12 conversation with a CI when there's giant over a year  
13 long investigation where they're making buys every day  
14 and the CI's talking about people every day.

15 THE COURT: Well, we're only talking one CI  
16 though, right?

17 MS. HABER: Right. And I just said that there  
18 are no -- there are DD5s not pertaining to this case.

19 THE COURT: Okay, right, right.

20 MS. HABER: You know, and I mean there's memo  
21 book entries about CIs and that kind of thing but they're  
22 not right.

23 THE COURT: They're not the ones about Mr. --  
24 they're about other parts of this conspiracy.

25 MS. HABER: As far as I know, but I don't



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1 know --

2 THE COURT: Okay.

3 MS. HABER: I don't know on -- yeah, I don't --  
4 I honestly, I don't -- as far as I know --

5 THE COURT: All right. But is there a way for  
6 you -- I mean if that's correct, there's no documents --  
7 it seems like what, there's four types of information  
8 here. There's the police file documents. There's  
9 whatever the ADA has. There's the grand jury minutes.  
10 There's the secret police file which is more CI-specific  
11 than -- I mean, it may tell you -- than case specific, I  
12 guess is the way to look at it, maybe that the CI was for  
13 just this case but their purpose in keeping it as kind of  
14 broader than just this case --

15 MR. BAKER: What I would like to know is like  
16 Ms. Haber said is that the CI -- this particular CI  
17 provided historical information about who did what where.  
18 Carl Goodloe was a worker. On what is he basing that  
19 information? Where did he get that information from?  
20 That's what we need to know. Where is he coming up with  
21 this? Is this something he came up with --

22 THE COURT: All right. But you can't interview  
23 the CI. Just take that as you're not interviewing the CI  
24 here. So --

25 MR. BAKER: That's why I would be asking for

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1 the adverse inference because it's --

2 THE COURT: -- if it's not -- well, I am not  
3 the trial --

4 MR. BAKER: Yeah, but --

5 THE COURT: I'm just wondering where this is  
6 going.

7 MR. BAKER: I think that's where we're going.  
8 I think that --

9 MS. HABER: Well, that's the information that  
10 could reveal the identity of the CI.

11 THE COURT: What? Wait, what?

12 MS. HABER: That's what -- the information he  
13 just asked for, where does this information come from?  
14 That kind of information could reveal the identity of a  
15 CI.

16 THE COURT: Yeah, we don't even know if that  
17 information -- so there's again four pieces for that,  
18 right? You think number one doesn't even exist, is that  
19 right? So can you -- it would eliminate part of this  
20 problem --

21 MS. HABER: Right.

22 THE COURT: -- if you confirm it doesn't exist,  
23 at least we would know that. And then --

24 MR. BAKER: No --

25 MS. HABER: I think --

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1 MR. BAKER: Like for example, if hearsay were  
2 permitted, Officer Cooke is not going to be able to tell  
3 us, you know, where did the CI get this information? Did  
4 you really sit down and talk to this guy? Where did you  
5 find out about him? How did you know -- did he -- how  
6 did he know Carl Goodloe? Under what circumstances did  
7 he have contact with Goodloe? How did he know Carl  
8 Goodloe was a worker? Did he talk to Carl Goodloe? Did  
9 he buy from Carl Goodloe? Was he working with Carl  
10 Goodloe?

11 THE COURT: Did you ask those questions?

12 MR. BAKER: I tried to ask lots of questions  
13 like that at the deposition, they were all objected to.

14 THE COURT: Okay. All right. So it's  
15 another --

16 MS. HABER: Your Honor, I mean I think the  
17 information would come from testimony of A.D.A. Rios and  
18 Detective Cooke, and perhaps even with the grand jury  
19 minutes but that -- you know, I would object to any  
20 application to unseal those for various reasons.

21 THE COURT: All right. What's your point about  
22 Rehberg? You started to -- let's finish the discussion.

23 MS. HABER: Yeah, my point about Rehberg is  
24 that the defendants in this case and the CI would be  
25 immune from any liability for their testimony in the

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1 grand jury --

2 THE COURT: Yeah, but --

3 MS. HABER: -- under Rehberg.

4 THE COURT: Okay. But there's two things.

5 One, the CI's not being sued. So this is not a question  
6 about his or her immunity and the -- in theory, I mean I  
7 think malicious prosecution has become a harder and  
8 harder tort to win but basically plaintiff's theory is  
9 from day one, this was baloney. I mean, so any  
10 interaction the police had both before and after the  
11 grand jury -- and then -- okay, this is going out on a  
12 limb, I don't even know if this is the argument but I  
13 think this is where you're going. If you could show they  
14 set up the CI to lie, their actions outside the grand  
15 jury, not from their own testimony but in basically  
16 suborning perjury, would be problematic and potentially  
17 support your claim.

18 MR. BAKER: Yes.

19 THE COURT: That's not an immune -- they would  
20 not be immune. I have not looked at a case like that. I  
21 just don't see Rehberg as going that far, if you set  
22 somebody else up to lie in the grand jury. The person  
23 who is lying might be protected but --

24 MS. HABER: You know, I just --

25 THE COURT: I don't know if that clarified

## Proceedings

1 anything in my own head. Okay. So, you can --  
2 (indiscernible), you can figure out whether there's  
3 anything that we're actually talking about that's in the  
4 files. The grand jury minutes in general, what are you  
5 going to do about them? You're going to make a motion to  
6 find out if there is anybody -- I mean, if there were any  
7 other minutes besides the CI or the CI plus anyone you  
8 don't already have, is that what you're going to do?

9 MR. BAKER: Yes.

10 MS. HABER: Yeah, but he would have to make a  
11 motion to the state court and give the D.A.'s Office an  
12 opportunity to respond.

13 THE COURT: You know, you can -- I think we  
14 talked about this before. You can look into it. There  
15 are different views about who should handle that but --

16 MR. BAKER: Right.

17 THE COURT: I'm not -- I don't have a view.

18 MR. BAKER: You mean or the state court?

19 THE COURT: Yeah. But I don't -- I'm not  
20 expressing a view on that.

21 MR. BAKER: Something to read over the  
22 Christmas break?

23 THE COURT: Yeah. Yup. Yup. Because this  
24 case is like a Con Law class, right, from day one.

25 All right. Then we have the secret identity

## Proceedings

1 file which I don't know -- okay. All right. So besides  
2 going back and reading everything in light of what you  
3 have said, is there other information that we should get  
4 or have in order to figure this out?

5 MS. HABER: I mean, I would just, you know,  
6 reiterate our position that it's not relevant and even if  
7 it is relevant, he can't show a compelling need for this  
8 very important information.

9 THE COURT: Now let me ask you one last -- one  
10 thing, which is so I have an ex parte letter from the  
11 City explaining what cognitive impairment means. Is  
12 there any problem with me relying on that? You're not  
13 going to -- I mean, this is -- because it's a privilege.  
14 I mean, that would be normally how a privilege would be  
15 asserted. You can have an in camera review and say yes,  
16 they're correct that the privilege applies. But is there  
17 any --

18 MR. BAKER: Well, I don't know what evidence  
19 they presented to --

20 THE COURT: Well, no, I know you don't. That's  
21 the point.

22 MR. BAKER: Well, I would ask that medical  
23 records be provided to the Court.

24 MS. HABER: How --

25 THE COURT: All right. Whatever, but -- I'm

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1 not doing that. I just want -- I'm talking about the  
2 letter.

3 MR. BAKER: Oh, the letter? Without -- I would  
4 like to -- yeah, I would like the letter to be disclosed,  
5 so I could respond to it.

6 THE COURT: All right. But there's a different  
7 -- the argument is a little bit -- the question I am  
8 asking is a little bit different which is assuming you're  
9 not going to see it, is that mean it's something I  
10 shouldn't take into -- I can't take into account, given  
11 this is essentially a privilege or is it something I can  
12 take into account, right?

13 MR. BAKER: Take into --

14 THE COURT: If you analogize this to an  
15 attorney-client privilege dispute or whatever, I often do  
16 in camera reviews and say yes, this document is in fact  
17 what you say it is, you know, a privileged document. So  
18 here -- provided not the identifying information, just  
19 information about what cognitive impairment means and the  
20 question is can I rely on that -- I don't mean rely on it  
21 like a truthful, I mean the fact that you haven't seen  
22 it, is that a reason why I can't take it into account or  
23 I can take it into account?

24 MR. BAKER: I think you can take it into  
25 account.

Proceedings

1 THE COURT: Because?

2 MR. BAKER: Because it's just one-sided. I  
3 have no way of responding --

4 THE COURT: But aren't all privilege disputes  
5 one-sided? You don't usually ever see the document or  
6 information that's claimed to be privileged. And here  
7 the thing that's being privileged is the identity of the  
8 person -- identity, you know, name and/or other  
9 identifying characteristics.

10 MR. BAKER: Well, it is --

11 THE COURT: So isn't the privilege review an  
12 exception to this, you know, the general --

13 MR. BAKER: There should be an exception is --

14 THE COURT: Exception to the exception?

15 MR. BAKER: Exception to the exception. I  
16 mean, my -- this is the person that's putting my client  
17 in a conspiracy and the best way for a claimant to find  
18 out the facts is to depose the person and question him  
19 and that relying on the letter that was, you know, an ex  
20 parte letter is, I don't think it's protecting my  
21 client's interests.

22 THE COURT: What's the City's view?

23 MS. HABER: I would argue that you absolutely  
24 can consider it. I mean, I believe in the In Re City of  
25 New York, the Second Circuit case. The Court's reviewed



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1 in camera, the documents at issue and ruled that they  
2 were privileged and based their decision on their in  
3 camera review of the documents.

4 THE COURT: Right. I mean, that's the general  
5 practice. So I'm just the question really is there any  
6 reason to look at this differently? Because if you  
7 reveal the secret to you, I mean that kind of gets back  
8 to you or we could do this attorney's eyes only then the  
9 proverbial cat is out of the bag. I mean, and given that  
10 defendant's counsel doesn't even know who that person is,  
11 you know, I mean, maybe she could piece it together in  
12 the same way you could piece it together with the little  
13 bit of information she has but it would --

14 MR. BAKER: I'm not sure actually --

15 THE COURT: -- take quite an effort.

16 MR. BAKER: I'm not sure actually that the  
17 identification of the person is really -- other than if  
18 it's relevant to, you know, how well they know my client.

19 THE COURT: Sure. I mean, isn't it? Maybe  
20 this is all -- this is not to say about your client  
21 particularly, right?

22 MR. BAKER: Okay.

23 THE COURT: Some cases are vendettas by the  
24 complaining witness, right? Really, the police just are  
25 taking the complaints. It's not the way this case looks

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1 like but my point being that in general probably in a  
2 small community like this being the --

3 MR. BAKER: It could be a rival.

4 THE COURT: Yeah.

5 MR. BAKER: I mean, it could somebody that has  
6 it in for Mr. Goodloe.

7 THE COURT: Sure.

8 MS. HABER: But the only way that you would be  
9 able to learn about that is by revealing the identity of  
10 the CI --

11 THE COURT: Right.

12 MS. HABER: -- to your client.

13 THE COURT: No, exactly. Right.

14 MS. HABER: So that's --

15 THE COURT: Exactly.

16 MR. BAKER: Well, that's why we're in this jam.  
17 It's --

18 THE COURT: We're in a jam.

19 MR. BAKER: We're in a jam.

20 THE COURT: The question is how do you balance  
21 these two things?

22 MS. HABER: I mean I think we did provide  
23 enough information. The A.D.A. testified pretty much  
24 what information she learned. She didn't testify about  
25 dates or, you know, how they connected Carl Goodloe to

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1 the conspiracy but they did say that the CI provided  
2 information that connected him to conspiracy and she knew  
3 from the CI that he was a worker and that was additional  
4 information, in addition to the sale that --

5 THE COURT: Uh-hum.

6 MS. HABER: And I think that is generally what  
7 the CI testified. I mean, A.D.A. Rios said that on the  
8 record.

9 MR. BAKER: I think what really is at the heart  
10 of the matter, is really the relationship, if any,  
11 between the CI and my client. And if it turns out to be  
12 a person that we don't --

13 THE COURT: I thought it was the cops who had  
14 it out for client?

15 MR. BAKER: They --

16 THE COURT: I mean isn't that --

17 MR. BAKER: Yes.

18 THE COURT: -- the mega meta theory, whatever  
19 you said. They hated him.

20 MR. BAKER: Well, in other words, your Honor,  
21 if --

22 THE COURT: I mean obviously speaking  
23 colloquially but they were out to get him because they  
24 were mad about their colleagues having a problem because  
25 of the 2005 arrest and --

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1 MR. BAKER: Yes, Judge.

2 THE COURT: -- false arrest, right?

3 MR. BAKER: Yeah, I'm not sure -- we don't know  
4 if the CI acted because he was being truthful like the  
5 City claims, or he had a vendetta against my client or he  
6 was put up to it by the police. There's no way for us to  
7 know that unless we have all the information.

8 THE COURT: All right.

9 MS. HABER: But even if the CI was not being  
10 truthful, the officers were entitled to rely on it unless  
11 there was some reason to doubt the CI's veracity and, you  
12 know, I think --

13 THE COURT: Yeah, but well -- right.

14 MS. HABER: I mean I --

15 THE COURT: So but the problem with that is, I  
16 mean --

17 MS. HABER: But that goes back to false arrest.  
18 I mean, this isn't even a false arrest case. This is a  
19 malicious prosecution -- you know, this is malicious  
20 prosecution.

21 THE COURT: Well, but --

22 MS. HABER: We have to go by the indictment.

23 THE COURT: Yeah, but if you go to Mr. Baker's  
24 theory, which is the police -- whatever. There was  
25 solidarity among officers and for that reason, when they

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1 had this big problem where Mr. Goodloe spent a lot of his  
2 time, they were just able to tack him on and cause him a  
3 lot of pain and suffering by having him spend many, many  
4 months in jail for something he didn't do and they knew  
5 it because they knew they were making it up. And they  
6 had a situation that they could manipulate. And so -- I  
7 mean, that's the theory, whether there's any truth to it,  
8 I have no idea.

9 MS. HABER: Yeah. Could I just point out  
10 though at plaintiff's deposition he didn't even deny  
11 being there. He said, "I don't know if I was there on  
12 that date. I don't know if I was there on that date. I  
13 don't know. I don't know. I don't know."

14 So he can proclaim his innocence all he wants  
15 but at the deposition, he didn't really deny it. He just  
16 said, "I don't know. I don't remember. I don't remember,  
17 Ms. Haber. I don't remember, Ms. Haber." So --

18 MR. BAKER: Again, at the time of his  
19 deposition perhaps he didn't remember specifics but he's  
20 -- in the complaint, he's made his claim. So that's what  
21 the claim is.

22 THE COURT: All right.

23 MR. BAKER: You could cross-examine him about  
24 that at trial.

25 THE COURT: All right. Yeah, I don't know what

Proceedings

1 that means, right? You could ask me where I was in  
2 January '06, I would be like, I have no idea.

3 MR. BAKER: The fact is he knows that he didn't  
4 sell drugs in Larry Bozman's apartment. He knows that  
5 and he said so in his complaint and certainly, you could  
6 cross-examine him about that at trial, absolutely.

7 THE COURT: All right.

8 MR. BAKER: It goes to his credibility.

9 THE COURT: Anything else? So can you -- when  
10 can you look at the file and let us know?

11 MS. HABER: I mean, your Honor, I mean --

12 THE COURT: We're talking about anything you  
13 have, just so we can clear up that part of this.

14 MS. HABER: I'm leaving town next week myself.  
15 We were talking about vacation earlier.

16 THE COURT: Are you?

17 MS. HABER: But I'm only going for a few days.  
18 If I could have till maybe the January 5th or the end of  
19 that week?

20 THE COURT: Wait a minute. Let me just pull up  
21 the docket. I suppose you are taking more modest  
22 vacation than many other folks are apparently. All  
23 right, so --

24 MS. HABER: Yes, not even a week.

25 MR. BAKER: Don't feel so bad -- I'm taking a

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1 day off for a surgical procedure. That's my day off.

2 MS. HABER: Oh.

3 THE COURT: Hopefully a day to recover, right?

4 MR. BAKER: It's not a big one.

5 THE COURT: I don't know. I never believe  
6 them.

7 MR. BAKER: Preventative. It comes when you  
8 hit fifty. Enough said.

9 THE COURT: I still think you should take  
10 another day off.

11 MS. HABER: That's true.

12 THE COURT: I never believe the doctor when  
13 they're like, oh, this is just this.

14 MR. BAKER: I would love to.

15 THE COURT: I'm always like, if this were your  
16 pain, you wouldn't be happy. All right. So let's see.  
17 All right. You're supposed to be wrapping up but this is  
18 a case that keeps on giving.

19 MS. HABER: Yeah.

20 MR. BAKER: Give him some more than you're  
21 already offered him. I mean, get rid of it.

22 THE COURT: All right. Well, we'll talk about  
23 that in one second. When's the last time we entered the  
24 schedule?

25 MS. HABER: I think discovery was technically

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1 closed in July.

2 THE COURT: Except for this?

3 MS. HABER: Yeah.

4 MR. BAKER: Well, there were --

5 THE COURT: Except what about the grand jury  
6 minutes? That's where I thought -- we talked about that  
7 before.

8 MS. HABER: Actually, I think we extended  
9 discovery for like a -- we did the Michelle King (ph.)  
10 responses --

11 THE COURT: Right.

12 MS. HABER: -- and that kind of thing.

13 MR. BAKER: There were some other things I  
14 brought up in the motion that -- the date of the  
15 photograph, we still have to establish that. The date  
16 the photograph was taken. They said in the deposition  
17 they could find out. We never got word back from Cooke  
18 on that.

19 MS. HABER: I don't know how they can find out  
20 the date of that.

21 MR. BAKER: Look in the PIMS (ph.). He said  
22 it's in the PIMS complaint.

23 MS. HABER: But that picture was taken in --  
24 that photo array was generated in 2006.

25 THE COURT: Yeah, they had PIMS back then.



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1 They --

2 MS. HABER: It's my understanding if the  
3 records are sealed -- for example, this case, if that --  
4 this case would no longer be in PIMS. I don't know. I  
5 don't -- I mean, I don't see how that's relevant to  
6 anything either.

7 MR. BAKER: Well, if the same photograph --

8 THE COURT: Well, no, but he -- right, exactly.

9 MS. HABER: What's that?

10 MR. BAKER: It's the same photograph from his  
11 2005 arrest, it's certainly relevant.

12 MS. HABER: But why?

13 MR. BAKER: Because it shows motive that first  
14 of all, that should have been sealed and they should  
15 never have had that file.

16 MS. HABER: But he had like twenty prior  
17 arrests.

18 MR. BAKER: Yeah, but they claim --

19 MS. HABER: That could have been any photo from  
20 any of those prior arrests if he pled guilty.

21 THE COURT: All right. What do you want to do?  
22 It seems to me, there's this issue and the grand jury  
23 minutes. I mean I am not sure why they've done that but  
24 do you need them, do you want them --

25 MR. BAKER: Yes, I do.

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1 THE COURT: Are you going to try --

2 MR. BAKER: I want the testimony of the CI at  
3 the grand jury and I want all the --

4 THE COURT: No, I understand the CI issue here.  
5 I mean, maybe some state court judge will feel different  
6 but do we not -- did you ask any A.D.A. Rios if anybody  
7 else testified? Do we know the answer? I mean, is this  
8 just an effort --

9 MR. BAKER: The answer to --

10 THE COURT: To whether anyone else testified?  
11 You have the -- your discovery in the criminal case, you  
12 have got some discovery, right, from the --

13 MR. BAKER: I did. I got --

14 THE COURT: -- including certain grand jury  
15 minutes, right?

16 MR. BAKER: Yes.

17 THE COURT: We think the CI testified in the  
18 grand jury. Was there anyone else who testified?

19 MR. BAKER: Cooke and the undercover testified  
20 and --

21 THE COURT: And you have that?

22 MR. BAKER: We have that.

23 THE COURT: Is there anybody else?

24 MR. BAKER: Not that I'm aware of. I may not  
25 know but that's the only --

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1 THE COURT: Oh, all right. So that's --

2 MR. BAKER: Yeah.

3 THE COURT: Let me ask a really  
4 (indiscernible). The indictment was for multiple people?

5 MR. BAKER: Yes.

6 THE COURT: I mean, how were there not other  
7 people?

8 MR. BAKER: Excuse me?

9 THE COURT: How were there not other people  
10 testifying?

11 MR. BAKER: Oh, I'm sorry, Judge. There were  
12 lots of other officers testifying. Yes, there were the -  
13 - yes.

14 THE COURT: I mean, don't you usually do just  
15 one big --

16 MR. BAKER: And the grand jury presentation --  
17 there were tons of officers.

18 THE COURT: But you think you have everybody  
19 who was related to Mr. Goodloe --

20 MR. BAKER: Except for the CI.

21 THE COURT: -- except for the CI.

22 MR. BAKER: Yes.

23 THE COURT: All right.

24 MR. BAKER: I believe I do.

25 THE COURT: Well, then you don't really need --

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1 well, I thought you were saying earlier you didn't know  
2 whether you had gotten all of the relevant testimony.

3 MR. BAKER: I was referring to the CI  
4 testimony.

5 THE COURT: Okay. All right. So then I can --  
6 we'll deal with the CI. I mean, you may -- I don't know  
7 procedurally that's a different question.

8 MS. HABER: Your Honor, may I interject for a  
9 second?

10 THE COURT: Sure.

11 MS. HABER: With regard to the grand jury  
12 testimony that he has because it was provided in the  
13 criminal case, there's no protective order with regard to  
14 that, could we submit a proposed protective order if he's  
15 going to use it at trial or whatever so that we just make  
16 sure that those minutes are protected in the context of  
17 this case?

18 I mean he knows -- because he got it as the  
19 lawyer for the criminal defendant, he didn't have to go  
20 through the channels. You know what I'm saying?

21 THE COURT: It doesn't matter.

22 MS. HABER: To unseal, like you know, like  
23 they're not unsealed.

24 THE COURT: You mean they're out -- I mean they  
25 weren't --

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1 MS. HABER: Like they're not unsealed. They're  
2 not unsealed.

3 THE COURT: What are they? I don't know.

4 MR. BAKER: They were turned over, as part of  
5 open filed discovery. So I'm --

6 THE COURT: So I don't know enough about the  
7 New York State criminal process to know whether that  
8 means they're just out in the public now.

9 MR. BAKER: They're out in the public.

10 MS. HABER: No.

11 MR. BAKER: They're out.

12 MS. HABER: No, they're not, your Honor. My  
13 understanding is that they can only be used for the  
14 purpose of the criminal trial and then once the criminal  
15 trial is over, they're sealed and then you have to get --  
16 that's why you have to make a motion to the state court  
17 to use them in any other proceeding. You know, I think  
18 we've talked about but because they're out --

19 THE COURT: I don't know the answer.

20 MR. BAKER: I'm not aware of that, Judge,  
21 because I don't remember any order being -- but I don't  
22 want to -- I'll find out.

23 MS. HABER: Grand jury minutes, that's the  
24 whole thing with secrecy, they're always sealed. They're  
25 always sealed but the statements of the officers against

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1 the client are turned over as Rosario -- against the  
2 criminal defendants are turned over as Rosario, right, or  
3 as --

4 MR. BAKER: I think --

5 MS. HABER: -- before trial.

6 MR. BAKER: I think what, Ms. Haber, what you  
7 might need to do is you might need to contact the D.A.'s  
8 Office and have them provide to you whatever stipulation  
9 or agreement they had with the Court because there's open  
10 -- it's so routine over there in state court that nobody  
11 ever asks or thinks about the actual agreement. There is  
12 an agreement that's in place for open-filed discovery.

13 MS. HABER: In criminal cases but not for use  
14 in civil cases.

15 MR. BAKER: Well, I don't know where it says  
16 that. I have never seen anything that says that.

17 THE COURT: I don't --

18 MR. BAKER: I've just received the stuff --  
19 they give you a letter in open court. They give it to  
20 the co-defendants so everybody's got it, you know. It's  
21 pretty loosey-goosey so-to-speak.

22 THE COURT: First of all, we have a protective  
23 order, right, in this case?

24 MS. HABER: We have it for the purpose of the  
25 confidential --

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1 THE COURT: All right. So you --

2 MS. HABER: -- disciplinary records.

3 THE COURT: It doesn't let information be  
4 designated as confidential?

5 MS. HABER: Oh, yeah, I guess it does.

6 THE COURT: It usually does.

7 MS. HABER: Yeah, I guess it does.

8 THE COURT: Okay. So why don't we --

9 MR. BAKER: I would agree not to --

10 THE COURT: -- just for now, until you figure  
11 this out, treat those grand jury minutes as confidential  
12 pursuant to that order.

13 MR. BAKER: Of course, Judge.

14 THE COURT: But you all should follow-up  
15 because I have no idea what the answer is to this  
16 question about -- I guess, I don't know.

17 MS. HABER: But the Second Circuit --

18 THE COURT: I assumed when they were released  
19 for the criminal case, they were released but that could  
20 be a wrong assumption.

21 MS. HABER: There's Second Circuit -- well, no,  
22 never mind. I'm getting confused. But they are -- it's  
23 my understanding that the minutes are sealed.

24 THE COURT: It's a limited release.

25 MS. HABER: Especially where the charges have

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1 been dismissed. Like all grand jury minute are sealed.  
2 That's what -- if, you know -- what's in the news today,  
3 like that's why they can't unseal the testimony of the  
4 grand jury. All minutes are sealed.

5 MR. BAKER: (Indiscernible) case dismissed  
6 against Goodloe's that's sealed.

7 MS. HABER: No, I mean it's sealed. The  
8 minutes are always sealed. So to use them -- it's my  
9 understanding --

10 THE COURT: Yeah, but the ones that are in  
11 the --

12 MS. HABER: -- because they're out, I know it's  
13 like --

14 THE COURT: Right, that's what I don't know the  
15 answer. Right. You're asking the right question but the  
16 ones that the news has been talking about, there was no  
17 indictment, and so they're sealed and so that's why  
18 there's that special proceeding to unseal them and your  
19 argument is that the release for purposes of a disclosure  
20 in a criminal case is a limited disclosure.

21 MS. HABER: Right.

22 THE COURT: And I don't know whether that is  
23 correct or not. I --

24 MR. BAKER: Because Mr. Baker --

25 THE COURT: No one's ever said, it's always



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1 sort of -- it's always, once they're out, they're out.

2 MS. HABER: Right, if Mr. Baker wasn't the  
3 criminal attorney, we would not have these grand jury  
4 minutes. We would have to go to the Court to get them.

5 MR. BAKER: Well, my --

6 MS. HABER: The only reason --

7 THE COURT: Well, but he's the defendant -- I  
8 mean, the defendant is the same person. It's not just  
9 the attorney.

10 MR. BAKER: Yeah, the plaintiff would have it.

11 THE COURT: The plaintiff himself, the --

12 MS. HABER: No -- okay. I just want to issue  
13 the protective order --

14 THE COURT: Okay.

15 MS. HABER: -- to protect it because it's my  
16 understanding --

17 THE COURT: Okay.

18 MS. HABER: -- that they are sealed. We can't  
19 use them in the context of the case. They can be used  
20 for --

21 THE COURT: All right. Are they in here?

22 MR. BAKER: I don't think we used any grand  
23 jury minutes, Judge, in the exhibits.

24 THE COURT: No.

25 MS. HABER: No.

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1 THE COURT: No, okay. Okay. I don't know the  
2 answer.

3 MS. HABER: I mean I think now --

4 MR. BAKER: We'll look --

5 MS. HABER: Yeah.

6 THE COURT: I mean what do we know?

7 MR. BAKER: Let's you and I look into that.

8 MS. HABER: Okay. I mean I think that it is  
9 now -- I was before Judge Levy the other day on a similar  
10 or a couple of weeks ago on a similar issue where the  
11 plaintiff's attorney got the minutes and, you know, we  
12 asked for a protective order for the same reason and he  
13 said what you said, well it's kind of the cat's out of  
14 the bag now but if you submit a proposed order, I'll so  
15 order it.

16 MR. BAKER: Well, I won't.

17 MS. HABER: So just to keep them  
18 confidential --

19 MR. BAKER: I haven't disseminated them.  
20 There's no reason to. Nobody's asked me to and I  
21 wouldn't if they asked because it's all about Goodloe's  
22 case and I don't even know -- I don't believe he's got a  
23 copy of the grand jury minutes. He may have read them in  
24 my office, but he doesn't have them.

25 THE COURT: All right. But the question is --

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1 all right. But the question is what can you do with them  
2 and then I guess it raises the issue about what happens  
3 at trial because --

4 MR. BAKER: Well, they should be unsealed for  
5 purposes of cross-examination if that's --

6 THE COURT: I'm not disagreeing I'm just saying  
7 that we don't know --

8 MR. BAKER: Right.

9 THE COURT: -- what the --

10 MS. HABER: That's the point.

11 THE COURT: -- where we are.

12 MS. HABER: Because you have them and you're  
13 going to use them for impeachment and whatnot, then I  
14 just want them under a protective order of some sort  
15 which maybe you're, you know --

16 THE COURT: Well, I'm saying until you get back  
17 to me about what the status is and then if whether the  
18 protective order should continue but I'm not looking at  
19 your protective order but what I generally write is then  
20 the issue is not decided for trial.

21 MS. HABER: Okay.

22 THE COURT: And trial right, you would,  
23 normally use that kind of material but if they're -- I  
24 don't know what they are -- still sealed, I don't know,  
25 it presents a conundrum.

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1 MS. HABER: That's right.

2 THE COURT: We need more information. If you  
3 think there's this agreement it would be helpful to get  
4 that.

5 MS. HABER: I don't know what agreement --

6 THE COURT: See what the letter says.

7 MS. HABER: I mean, I don't know if --

8 MR. BAKER: I'll unseal all the grand jury  
9 minutes, not just the CI's minutes.

10 THE COURT: Well, yeah, I mean that would  
11 obviously be the follow-up to this.

12 MS. HABER: But then that's what, testimony  
13 from thirty-seven people, your Honor. This case was  
14 indicted once and then they had to start over. I mean,  
15 this is like months and months of testimony. It's  
16 complete -- it's just to have all these officers. It's  
17 just nothing is relevant. There's grand jury secrecy. I  
18 mean, to unseal the whole thing --

19 THE COURT: I'm not --

20 MS. HABER: -- I would object.

21 THE COURT: I don't think Mr. Goodloe cares  
22 about all that, I mean so far he doesn't.

23 MR. BAKER: Just with respect to his case.

24 MS. HABER: Okay.

25 THE COURT: He just cares about -- Mr. Baker

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1 just cares about Goodloe.

2 MS. HABER: Okay.

3 THE COURT: What you think are --

4 MS. HABER: I thought you meant the whole  
5 thing.

6 THE COURT: But no, no, no. But he's saying  
7 the three.

8 MR. BAKER: What are you hiding something?

9 THE COURT: Right, he's talking about the  
10 three, the CI and the two others, right? That's what  
11 you're talking about.

12 MR. BAKER: Right, Judge.

13 THE COURT: But -- okay, but then that doesn't  
14 make sense for you to make that motion until we decide  
15 here.

16 MR. BAKER: I agree.

17 THE COURT: So --

18 MR. BAKER: That's fine.

19 THE COURT: -- let's back burner that for a  
20 second.

21 MS. HABER: Well, if he's going to move to  
22 unseal the CI, he could just move to unseal all of them  
23 and that would avoid --

24 THE COURT: Sure, it could be the other way  
25 around though. He may need to unseal the other two, even

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1     though he's not going to be allowed to get the CI.

2             MS. HABER:   Right.   Right.

3             THE COURT:   That's the trial issue, right?  It  
4     doesn't need to hold us up if you are getting just those  
5     other two because you could deal with it sealed for now  
6     and then when you get the unsealing order or whatever --

7             MR. BAKER:   So I should move forward with the  
8     unsealing order, right?

9             THE COURT:   I think we should check in in a  
10    couple of weeks --

11            MR. BAKER:   Okay.

12            THE COURT:   -- and see where we're at with --

13            MR. BAKER:   Okay.

14            THE COURT:   -- because the answer to this  
15    question with figuring this thing out and see which way  
16    we should go.

17            MS. HABER:   I think we can do a proposed order  
18    for the minutes that he already has but I --

19            THE COURT:   They're covered by the  
20    confidential --

21            MS. HABER:   Okay.

22            THE COURT:   I'm just saying it on the record.

23            MS. HABER:   Okay.

24            THE COURT:   So they're covered by the existing  
25    confidentiality order.  They're designated for now until

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1 we know the answer to whether they are technically field  
2 for purposes other than use by the criminal defense and  
3 then we'll figure out where to go. All right.

4 Besides this issue, is there any other  
5 discovery?

6 MR. BAKER: One second, Judge.

7 THE COURT: Uh-hum.

8 MR. BAKER: Just that photograph and the date  
9 that photograph was taken.

10 MS. HABER: Well, I provided you a color copy  
11 of the photograph.

12 MR. BAKER: It doesn't have a date on it. I  
13 need to know when that photograph was taken --

14 MS. HABER: I don't know --

15 MR. BAKER: -- if it was taken on September of  
16 '05. It's got to be somewhere.

17 MS. HABER: In the photo array?

18 MR. BAKER: Yes.

19 MS. HABER: We object. We object.

20 THE COURT: Why?

21 MS. HABER: Because it's not reasonably  
22 calculated to lead to the discovery of admissible  
23 evidence, the date on which the photo and the photo array  
24 was taken.

25 MR. BAKER: It's relevant.

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1 THE COURT: Why is it burdensome?

2 MS. HABER: Because as far as I know, that was  
3 conducted through a computer system in 2006 and as far as  
4 I know, they -- when you enter -- it's in the testimony.  
5 He explains what happened but what happens --

6 MR. BAKER: If it (indiscernible) --

7 MS. HABER: -- but when you look for a -- when  
8 you're organizing a photograph or somebody organizing a  
9 photo array, the computer just generates the most recent  
10 pictures, is my understanding, right?

11 MR. BAKER: Wait.

12 MS. HABER: We have a --

13 THE COURT: Wait. Can't you tell when it was  
14 entered though?

15 MR. BAKER: It's got to be a date -- yes,  
16 Judge.

17 THE COURT: Without a lot of work?

18 MR. BAKER: The answer is yes. He testified at  
19 the hearing that it's a PIMS system. He can go into the  
20 PIMS system and check.

21 THE COURT: What does that mean PIMS?

22 MR. BAKER: It's a -- I forget what it stands  
23 for but it's the system that use to generate photo  
24 arrays.

25 THE COURT: Okay.



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1 MR. BAKER: It's a computerized system. It's  
2 been use for years. And they could plug in his NYSID  
3 number and up will pop whatever picture pertains to him  
4 and they could look at the picture from the photo array,  
5 look at what pops up in PIMS and figure out which one it  
6 was they used. That's it.

7 THE COURT: And there's a date --

8 MR. BAKER: And there's a date.

9 THE COURT: -- associated with that.

10 MR. BAKER: He said there's a date. Yeah,  
11 that's what he testified to.

12 THE COURT: I think if that's all it is, you  
13 should do that or get somebody at the police department  
14 to do that. If it turns out to be more complicated, and  
15 you're spending a lot of money or a lot of time, come  
16 back and let me know.

17 MS. HABER: Okay.

18 THE COURT: But if that's all it is --

19 MS. HABER: I don't think --

20 THE COURT: Because I think --

21 MS. HABER: I don't know, your Honor.

22 THE COURT: All right.

23 MS. HABER: I mean I don't know why it's  
24 relevant at all.

25 THE COURT: Because the theory of the case is

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1 that they -- well, let me back up. There's theoretically  
2 the follow-up question. It could be randomly that the  
3 computer generated and I guess this isn't a question,  
4 assigned his picture from 2005 to the photo array, right?  
5 That's a -- is that a possibility?

6 MR. BAKER: It's possible that it was random  
7 but I -- it seems to me that it would support my case and  
8 also would be another argument to show that these  
9 officers --

10 THE COURT: They knew.

11 MR. BAKER: -- were acting in bad faith because  
12 they're using a photograph that should have been  
13 destroyed pursuant to 160.50.

14 THE COURT: Yeah, I think it's --

15 MS. HABER: But it's not on them to destroy the  
16 photograph. Like I --

17 MR. BAKER: It is. Yes, it is. It's on them.  
18 They're the ones who are the arresting officer.

19 MS. HABER: No, it's not up to Detective  
20 Christopher Cooke to destroy photographs of every --

21 MR. BAKER: The statute says it's on them.

22 MS. HABER: All right.

23 THE COURT: Interesting. I didn't know that.

24 MR. BAKER: I believe it does.

25 MS. HABER: I --

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1 MR. BAKER: It says the police are obligated to  
2 destroy or send the material back to the arrestee, notify  
3 the criminal justice agency.

4 MS. HABER: Has Carl Goodloe gotten his photos  
5 back on every arrest?

6 MR. BAKER: Never. And that's our next  
7 lawsuit.

8 MS. HABER: I mean, like this is --

9 THE COURT: All right. Well, that's somebody's  
10 big class action.

11 MS. HABER: Okay. This is just, you know -- I  
12 mean, there's a statute of limitations. I mean there's  
13 this --

14 THE COURT: Just find out what the story is  
15 about --

16 MS. HABER: Okay.

17 THE COURT: -- whether that was the picture  
18 and --

19 MS. HABER: Okay.

20 THE COURT: And, you know, don't go crazy but  
21 get --

22 MS. HABER: Okay.

23 THE COURT: -- if it's really what was said in  
24 the deposition and it is a modest amount of work, it's  
25 arguably relevant.

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1 THE COURT: Okay. So there's this issue. Any  
2 other -- all right.

3 Let me for the next two minutes and then I'm  
4 going to go -- settlement. Okay. I mean we're on the  
5 record here but have you talked about it at all?

6 MR. BAKER: Not really. There hasn't been any  
7 change in the City's position. You know, I think the  
8 last offer was --

9 MS. HABER: Are we saying it on the record?

10 THE COURT: No, here I'll turn it off.

11 MS. HABER: Okay.

12 THE COURT: I'm going off the record.

13 MS. HABER: Thank you.

14 (Off the record)

15 THE COURT: Okay. So we're looking at January  
16 9th for basically an update on these outstanding issues  
17 which are the photograph, whether the grand jury minutes  
18 that were released in the criminal case are still --  
19 sealed for the purposes of this case and for now, they're  
20 confidential under the confidentiality order and the --  
21 what it is, if anything, the defendants -- the D.A.  
22 and/or the NYPD has about this case in the case-specific  
23 files. We're not talking about the -- I don't know what  
24 you want to call it -- the background file on the CI for  
25 now. Do you know if that exists or you're just saying as a

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1 general thing that exists for CIs but you don't know?

2 MS. HABER: I do know that that exists.

3 THE COURT: Okay. All right.

4 MS. HABER: Yes.

5 THE COURT: So there's something else. Okay.

6 So January 9th. All right. Enjoy your days off.

7 MR. BAKER: Judge, do you want us --

8 THE COURT: Yes, sorry.

9 MR. BAKER: -- here?

10 THE COURT: No, no, you could do it in a  
11 letter. If we need to call, we'll have one.

12 MR. BAKER: Okay.

13 THE COURT: And then obviously the fourth thing  
14 is if they're really -- you know, think about how this  
15 looks -- how this all plays out at trial, it might affect  
16 what you think about this whole case or not. I mean, it  
17 may make you feel stronger, weaker, I don't know, you  
18 know? Think about all the briefs you're going to write  
19 for Judge Matsumoto.

20 MS. HABER: She's going to love this case.

21 THE COURT: Yup. All right. Thanks.

22 MR. BAKER: Okay. Thank you, Judge.

23 MS. HABER: Thank you, your Honor.

24 (Matter concluded)

25 -o0o-

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 30th day of April, 2015.

  
Linda Ferrara

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